



**Upper Tribunal  
(First Tier Tribunal and Asylum Chamber)** Appeal Number: AA/09040/2013

**THE FIRST TIER TRIBUNAL ACTS**

**Heard at Field House**

**Determination  
Promulgated**

**On 8 May 2014**

**Before**

**THE HONOURABLE MRS JUSTICE ANDREWS DBE  
UPPER TRIBUNAL JUDGE PINKERTON**

**Between**

**RM  
(ANONYMITY DIRECTION CONTINUED)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Kirk, Counsel

For the Respondent: Mr P Nath, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is an appeal brought by the appellant, who is a citizen of Iran against a determination of the First-tier Tribunal rejecting her appeal against a refusal of asylum and holding that there was no infringement of her human rights under Articles 2 or 3 of the European Convention. In the course of dismissing the claim for asylum and humanitarian protection the

judge made substantial adverse findings of credibility, having had the advantage, which this Tribunal does not have, of seeing and hearing the appellant give evidence.

2. The appellant's case is that she worked as a midwife in a private clinic in a surgery in Iran. In 2010 she had the grave misfortune to have been raped by an unknown assailant. This traumatic experience, amongst other things, caused her to suffer from depression. As a result of some friendships that she made as a result of the treatment that she obtained for her depression from a psychologist, she became politically active. She started doing work in a deprived area of the country assisting other women who had been abused by men and in particular helping them if they became pregnant, on occasion performing abortions.
3. Abortion in those circumstances is illegal in Iran and if the claimant had been discovered carrying out these abortions the consequences would have been serious for her, and indeed serious for those upon whom she performed the abortions. For that reason she was careful to conceal her activities from her employers at the government health centre and from other people who were aware of what she did for a living. Nevertheless it was her case that one of her friends who had similar concerns and similar political goals was planning to write an article or a report about the abuse of women in Iran which would be read overseas, and bring that problem to the attention of the United Nations. In support of that aim and objective the appellant was asked by the friend to provide details to the friend, in trust, of particular cases that she had dealt with. She agreed to do so, and in a period of some six months, whenever she met this lady she handed over notes relating to cases with which she had dealt. Those notes identified the patients upon whom the operations had been performed, with dates and details. The one thing that was apparently missing from them was the appellant's own name.
4. It was after the appellant had come on leave to the United Kingdom to visit her sister and her children in October 2011 that trouble apparently blew up. The appellant had obtained an extension of her leave. Although there was no written evidence of this, on her account she had phoned somebody at the health centre and spoken to the senior supervisor who had informally given her permission to stay on in the UK a little longer, and she also made arrangements with a locum to cover her shifts. It was while she was making these arrangements for extended absence that she discovered from the locum that a letter had arrived from the governing board, the General Medical Council for State-run healthcare in Iran, addressed to the appellant. The locum had not opened that letter and the appellant did not ask her to do so because such letters were quite common and she did not think anything of it at the time, but subsequently she received an email from her cousin stating that there was a second letter from the General Medical Council which had arrived at the health centre. She asked her cousin to open both the letters and discovered that the first one had requested her to report to the General Medical Council, without giving a reason. The second one had said that she was to report

to the disciplinary branch of the General Medical Council, again without giving any reason.

5. Neither of those letters was produced in evidence. The explanation that was given was that there was a danger (or it was perceived that there would be a danger) that those documents would come to the attention of the authorities in Iran were they to be scanned and emailed in the way that other documents that were produced in evidence were sent.
6. The appellant's version of events was that after this, some plain clothes officers from the Iranian intelligence services had come looking for the appellant at the clinic. She alleged that it subsequently transpired that some of her friends had been arrested and detained, including the lady to whom she is said to have supplied the details of the illegal abortions. In consequence of that, the appellant became frightened. She found out that members of the police or plain clothes members of the police or intelligence services had taken computer evidence, and there had been alleged threats to other members of her family. Her father came over to the United Kingdom for a family conference as to what to do and on his return to Iran he and her mother were detained by the authorities, but managed to obtain their release by raising money for suretyship. In consequence of all of these developments she claimed asylum, but was refused.
7. That was the account that she gave to the First-tier Tribunal judge, and he disbelieved it. The determination goes into considerable detail as to why the judge came to the conclusions that he did. He made fact-findings that she was indeed an Iranian citizen who had worked as a midwife at a government health centre and in a private clinic, but she did not carry out illegal abortions in Iran and she did not provide information regarding those illegal abortions to the friend to use as material in a publication or report. He also found as a fact that no-one associated with her had been arrested in Iran in connection with illegal abortions or political activity aimed at the promotion of the rights of abused women, and that she was not at risk of prosecution or of ill-treatment if she returned to Iran. She had not met the low threshold for showing a well-founded fear of persecution for a Refugee Convention reason.
8. It is a careful and well-reasoned determination. Nevertheless, the grounds of appeal seek to challenge it on a number of bases, the first being that a finding made by the judge that is said to have been at the heart of the criticism of the appellant's credibility was "perverse". In order for a fact-finding or any type of finding to be perverse it has to be outwith the reasonable range of determinations or decisions that the decision-maker is entitled to reach, and therefore that is a strong criticism to make or to sustain. The finding that is under challenge is in paragraph 21 of the determination, and it is the first ground on which the plausibility of the appellant's account was challenged by the judge. He says that there are inconsistencies and implausibilities in the appellant's account of carrying out illegal abortions. He then sets out what that account is and he says:

“However, there are inconsistencies in her account because although she accepted that there were substantial risks in carrying out illegal abortions which attracted severe penalties and although she undertook the procedures in secret she was prepared to provide her psychologist friend with detailed information regarding the cases she had been concerned with. Her name may not have been supplied with the information handed over but nevertheless I find it inconsistent and implausible that the appellant who said she was aware of the risk she was taking by performing abortions should provide details of her work which she well knew might be used in a publication. Even if she was not named as a source of information there was a real risk that her identity would get known to the authorities because of the other detailed information provided by her regarding the abortion.”

9. Mr Kirk submitted that that finding was a perverse finding because the underlying assumption behind it was that nobody in the appellant’s position would ever put themselves at risk. Many asylum seekers, because of their political activities or their other activities, do run such a risk and do so consciously. Therefore he said that the statement was wholly illogical, and that it taints the whole of the rest of the determination. That was the basis on which the single judge of the Upper Tribunal gave permission to appeal. However, in our judgment there is no perversity in the finding, because the flaw that Mr Kirk identifies is not even present in paragraph 21. On our reading, the judge is saying no more than that there is an illogicality or an inconsistency between, on the one hand, taking all kinds of steps to ensure that one’s activities, the abortions themselves, are kept secret and to avoid those matters coming to the attention of the authorities, whilst on the other hand, and at the same time, allegedly providing such substantial details of what was going on, including names, dates and so forth, to a friend for the express purposes of publication. The two do not sit well together. The judge might equally well have said that the whole of the story in relation to the provision of that information to the friend for publication was manifestly implausible. That would not have been a perverse finding, given that if she did have the objectives she had stated, it would have always been open to the appellant to have anonymised the names of the people on whom she performed these abortions, and it would not have been necessary for the purposes for which the information was allegedly required to have given such detail, even to a trusted friend. Be that as it may, the findings that the judge made as to the inconsistencies and implausibilities in the appellant’s story are well within the range of findings that were open to him on the evidence before him, and there really is nothing to say that there is an error of law, let alone a material one, in his fact-findings in that particular regard.
10. Ground 2 relates to a finding by the judge that it was inconsistent and implausible that the appellant would have been granted an extension to her leave by the health centre where she worked at a time when she had been sent a letter by the General Medical Council requesting her to attend

their offices. That finding appears in paragraph 22 of the determination, and we accept that it appears to be based upon a factual premise which was not necessarily made out, namely that those who were working at the government health centre were aware of the fact that the letter required her to report to the General Medical Council headquarters when on her own evidence it appeared to be a routine letter from the General Medical Council and it was not in fact opened. However, this is just one of many adverse findings that were made. Even if some criticism could be levelled at the judge in relation to that matter, as well as the matter which is criticised in ground 3 to which we will come, they are minor aspects of what is otherwise a carefully reasoned decision, which even absent those findings would be justified in terms of the appellant's credibility.

11. The third ground relates to a sentence at the end of the same paragraph in which there is said to be an inconsistency which was not satisfactorily explained by the appellant between what she said in her asylum interview (which was that she had been living alone since 2008) and what she said in her witness statement about whether anyone had been to "our" house, which suggested that she was not living alone at that time. It said that it was procedurally unfair for the judge not to have asked the appellant about this inconsistency, before making adverse findings on the back of it. However, she was representing herself at the time, and again it is not something which is really at the heart of the findings against her in terms of the plausibility of her account. Whether she was living alone or living with somebody else at a relevant time does not really have very much impact one way or the other on whether or not she had a reasonable fear that she was going to be subject to persecution on account of the activities she was allegedly carrying on in the clinic and the information she allegedly supplied to her friend.
12. Although Mr Kirk focused on paragraph 21 of the determination, the real heart of the findings made against the appellant is in paragraph 24, and that relates to the two letters from the General Medical Council to which reference has already been made and the fact that they were not produced in evidence at the hearing. Ground 4 of the grounds of appeal challenged these findings by the First-tier Tribunal judge. In particular it is said that the judge was simply making a subjective evaluation of what he would normally expect to happen, rather than proper findings about what can objectively be ruled out as unlikely. We reject that criticism. The way in which the judge expresses himself is impeccable. He states that:

"It is also surprising that the two letters sent to the appellant by the General Medical Council and received at the government health centre were not adduced as evidence at the hearing. They would have provided good independent evidence that the authorities were interested in her, and the second letter in particular would have provided important evidence that she was required to attend the disciplinary branch of the General Medical Council. At the hearing it was said that the letters could not be sent to the United Kingdom because all post from Iran was checked. However, at the hearing the

appellant said that the statements of her father and her cousin had been scanned and sent to the United Kingdom by email, and it is reasonable to conclude that the letters, which it is also reasonable to conclude that the authorities would wish the appellant to see, could have been sent in the same manner. The absence of this independent evidence undermines the credibility of the appellant's account."

13. Mr Kirk submitted that that reasoning did not adequately explain why it was that the judge came to the conclusion that the appellant's explanation should be rejected. He pointed to the fact that the letters would have at least borne some kind of crest or symbol to show that they had been sent by the General Medical Council, but as the Tribunal pointed out in response to that submission, the way in which they would be sent would be by way of attachment to an email and it was only if those attachments were opened that one would see any such crest or symbol. In any event, the general point that is made by the judge is one that has considerable force and obviously is not one that is open to criticism. The grounds in this regard really amount to little more than a disagreement with the way in which a point was found against the appellant.
14. The fifth ground relates to a finding tagged onto the end of paragraph 24 of the determination, that it was implausible and inconsistent with the appellant's claim to fear criminal prosecution in Iran for performing illegal abortions that although it is claimed that security officers have harassed her parents, no warrant has been issued or any criminal proceedings started against her in that regard. We accept that there is some force in the criticism made by Mr Kirk, in that the finding assumes that a warrant would be issued against the appellant, whereas there was objective empirical evidence that in Iran very little respect is given to the legal requirements for the issue of warrants, and that the Iranian authorities in general fail to comply with proper procedures and simply send people around to pick up suspects and to take them away to prison or for interrogation, frequently without informing them of what the charges are, and certainly without necessarily doing the relevant paperwork.
15. However, even though that point may not have been a justified ground for criticism of the appellant's case, it is described as the final point in the determination, and in our judgment there is more than sufficient material in its absence to warrant the adverse findings on credibility. Mr Kirk submitted that we should be very careful when speculating as to the extent to which particular points would have had a bearing on the outcome, and what difference it would make if those findings had not been made. However we are satisfied, looking at this overall very careful determination, that the small points in which it can be said with justification that the Immigration Judge fell into error on findings that were adverse to the appellant made no material difference, and could have made no material difference to the outcome of his determination, which was that she was unable to satisfy the low threshold either for asylum or humanitarian protection, or to show that there is a real risk that Articles 2

or 3 of the European Convention on Human Rights would be engaged on her return.

16. For all the above reasons, and despite the way in which the matter was attractively presented before us by Mr Kirk, we dismiss this appeal.

**Direction Regarding Anonymity - Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Mrs Justice Andrews