



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

Appeal Number: AA/02993/2015

THE IMMIGRATION ACTS

Heard at Glasgow

Decision and Reasons

On 21 December 2015

**Promulgated
On 5 January 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

PB

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E MacKay, of McGlashan MacKay, Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

- 1.—The appellant is a citizen of Iran, born on 30 January 1991. By determination promulgated on 17 August 2015 First-tier Tribunal Judge D'Ambrosio allowed an asylum appeal by her father DB (AA/02957/2015) and dismissed her appeal. The respondent does not challenge the outcome in her father's case.
- 2.—The appellant's grounds are set out in 9 paragraphs. In a rule 24 response the respondent argues that the judge carefully distinguished the two

cases, gave clear reasoning, and came to a valid conclusion with which the grounds merely disagree.

3.—The first substantive point in the grounds is at paragraph 2. This criticises paragraph 74 of the determination, which says:

“Note: here I asked Miss McHugh [the appellant’s representative in the First-tier Tribunal] to provide supporting country evidence ... that the Iranian authorities would subject every member of the first appellant’s family to persecution... In reply Miss McHugh said that the first appellant’s wife and his elder son ... are both in hiding, which showed that they feared that the authorities would do that.”

4.—The ground says that this was “looking for evidence of what would occur and not what was a serious possibility of occurring”. Mr MacKay submitted that this amounted to an error of applying the wrong standard of proof.

5.—I am satisfied that this ground misunderstands the determination. Paragraph 74 is no more than a record of the exchange which took place when the judge (very reasonably) asked to be directed to background evidence to support the submission that risk to the first appellant might extend to the rest of the family. Paragraph 74 does not express any conclusion. It does not even hint that the judge may have applied any standard of proof other than the very well known lower standard, on which he directed himself at appendix one and at paragraphs 46 - 48, and which permeates the resolution of the case, for example at paragraphs 86 and 91.

6.—The conclusion which the determination does reach on the point mentioned at paragraph 74 comes at paragraph 89, where the judge declines to find risk to family members in Iran or to this appellant. This conclusion is attacked at paragraph 8 of the grounds, but in terms which amount to no more than insistence and disagreement.

7.—Paragraph 3 of the grounds asserts that the judge “failed to address the factual matrix of the appellant’s position on return.” This misrepresents the determination, which addresses precisely that question. It is only an insistence that the circumstances “would arguably place her at risk”, when the judge has decided to the contrary.

8.—Paragraph 4 of the grounds elaborates at length on the judge’s observation that the appellant might take with her on return a copy of her father’s refugee status document. I do find that an odd comment. I doubt if members of the Iranian authorities would be much mollified by the news that the appellant’s father has been recognised as a refugee in the UK. However, Mr MacKay did not add to this ground in submissions, and its sub-paragraphs (a) to (f) only add further levels of conjecture to an incidental and hypothetical remark. The judges’ critical finding was that the authorities were not likely to target the daughter as a result of the warrant vindictively taken out against her father. This part of the grounds shows a degree of speculation, but not material error.

- 9.—Paragraphs 5 and 6 of the grounds say that the judge was wrong to hold that the appellant’s claim did not fall into the Refugee Convention category of particular social group. The point might be debatable, although the grounds amount to insistence rather than to an analysis showing that the judge erred in dissenting from *TB (PSG - women) Iran UKIAT 00065*. Mrs O’Brien submitted that the judge was right, for the reasons he gave. I tend to agree, but the issue is immaterial in the absence of any finding that the conclusions on risk fall to be set aside, and so it need not be answered further.
- ~~10.—~~Paragraph 7 of the grounds misrepresents the effect of the evidence before the judge. The evidence to which he referred at paragraphs 87 and 88 did show that a woman’s first marriage required the approval of her father or paternal grandfather, or the approval of the court granted on her application. That plainly did tend against the claimed risk of enforced marriage, particularly as her circumstances were the opposite of those individuals shown by the background evidence to be liable to such coercion.
- ~~11.—~~Paragraph 9 of the grounds argues that in light of finding in favour of the appellant’s father the judge should have reconvened for further submissions on article 8 of the ECHR. This is no more than asking for a second bite at the cherry. The case was there to be made on alternative outcomes. There has been no unfairness. The grounds develop the case on the basis of family members “in hiding” in Iran, but the determination rejects the alleged need to hide. In any event, as an adult, and having family in both Iraq and the UK, it is difficult to see that the appellant had any real prospect of constructing a case for a right to remain under article 8, when no such case could be made under the immigration rules.
- ~~12.—~~There must be understandable family disappointment that the appellant failed while her father succeeded. However, it was for the judge to decide each case. He did not differentiate lightly, but went to considerable pains of analysis. The grounds do not show any error which materially affects the conclusions reached.
- ~~13.—~~The determination of the First-tier Tribunal shall stand.
- ~~14.—~~ No anonymity direction has been requested or made.—



Upper Tribunal Judge Macleman

22 December 2015