Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06177/2013

THE IMMIGRATION ACTS

Heard at Newport	**Determination Promulgated**
On 6 May 2014	.....

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

AE
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Gayle of Elder Rahimi Solicitors
For the Respondent: Mr K Hibbs, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

Background

2. The appellant is a citizen of Iran who was born on 9 March 1992. He left Iran on 18 April 2013 and travelled to the UK by lorry. On 9 May 2013, he was arrested whilst leaving a lorry and claimed asylum. The basis of his claim was that he had been arrested and detained in 2012 whilst taking part in a "fire festival". He was ill-treated and only released when he signed a declaration stating that he had taken part in an illegal gathering and his father had paid a fine of 200,000 Tomans. After that, he became a member of an unnamed organisation through his friend "M" who had been arrested with him at the fire festival. On behalf of the organisation, the appellant distributed leaflets which he obtained by printing off leaflets by downloading them on his computer from memory sticks given to him by "M". On 26 March 2013, the police raided the appellant's house looking for him. He was informed of this by his neighbour and told that his father had been detained. With the help of his maternal uncle, the appellant went into hiding in a country house where he learned from his uncle that he had been accused of being a "Moharebah" (one waging war against the regime) and also a "Mofsed Fel Arz" (the corrupt one on earth). His maternal uncle and father paid an agent to take the appellant from Iran and he travelled to the UK, travelling in a number of lorries.

3. The appellant claimed that he was at risk on return because of his political activities; because he no longer considered himself to be Muslim and because he had left Iran illegally.

4. On 3 June 2013, the Secretary of State refused the appellant's claim for asylum and on humanitarian protection and human rights grounds. On 13 June 2013, the Secretary of State made a decision to remove the appellant to Iran as an illegal entrant by way of directions under paras 8-10 of Schedule 2 to the Immigration Act 1971.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. In a determination dated 9 August 2013, Judge C J Woolley dismissed the appellant's appeal on all grounds. He made an adverse credibility finding and did not accept that the appellant had been arrested in 2010 whilst taking part in a "fire festival"; he did not accept that the appellant had been involved with an illegal organisation through his friend "M" and that his house had been raided and his father detained as a result of his political activities. Finally, the Judge concluded that the appellant would not be at risk because of his anti-Islamic belief or on the basis that he had left Iran illegally. The Judge also dismissed the appellant's appeal under Article 8 of the ECHR.

The Appeal to the Upper Tribunal

6. The appellant sought permission to appeal to the Upper Tribunal on the basis that Judge Woolley had erred in law in reaching his adverse credibility findings. Permission was initially refused by the First-tier

Tribunal but on 30 September 2013, the Upper Tribunal (UTJ Coker) granted the appellant permission to appeal for the following reasons;

> "1. The essence of the grounds seeking permission to appeal are that the First-tier Tribunal Judge failed to give adequate or proper weight to or notice of the background material before him; in particular that the judge failed to have adequate regard to the COIS report on arrest warrants in the light of the appellant's evidence which itself was, it is asserted, misconstrued. A number of other evidential disagreements with the judge's finding as oppose to allegations of perversity.
>
> 2. It is, just about, arguable that the First-tier Tribunal judge misconstrued the appellant's evidence that his father had been released on the basis that he knew where the appellant was and thus he would have been given a copy of the arrest warrant. It is just about arguable that, when considered in the light of the COIS report, this fell into legal error such as to taint the overall findings albeit the other findings do appear to e within the range of findings reasonably open to the judge.
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> 3. Permission to appeal is granted."

7. On behalf of the appellant, Mr Gayle adopted the grounds of appeal which he expanded upon in his oral submissions. He sought to identify errors of approach in the Judge's determination concerned with his adverse findings in relation to the "fire festival" (paras 38, 39, 40 and 41) and in relation to his membership of the illegal organisation and his father's arrest (paras 43 and 44).

Discussion

8. I deal first with the submission concerning the Judge's findings at paras 38-41 concerned with the appellant's involvement in and arrest at a "fire festival" in 2012.

9. First, Mr Gayle submitted that the Judge had wrongly interpreted the background evidence in finding that the appellant would not have been arrested at a fire event involving only some fifteen people. He relied upon a document at page A97 of the appellant's bundle entitled "Iran to crack down on protests during fire festival"; a document at page A99 entitled "Persian cyberspace report; Supreme Council of Cyberspace established; Iranian New Year celebrations labelled 'superstitious'"; and a document at page A101 entitled "Iranian leader shuns ancient festival". He submitted that it was entirely plausible that the appellant would be arrested contrary to the Judge's conclusion and the Judge had failed to take into account the general background evidence concerning arbitrary arrests and the unpredictability of the Iranian forces.

10. At para 88, the Judge referred to the documents at pages A98, A99 and A101 and said this:

> "I have been referred by both parties to the fire festival in Iran, and the attitude of the authorities to those participating in it. Mr Gayle and Mr

> Khalfey have urged different interpretations of the objective evidence (at A98, A99 and A101 of the bundle) – the former submitting that those participating in such festivals are at risk for that alone, while the latter suggesting that only where there was an element of demonstration involved in such fire festivals would participants be at risk. After considering the objective evidence I prefer Mr Khalfey's interpretation. It is clear from the context that the authorities are most concerned when the fire festival is "used as an excuse for people to pour onto the streets en masse" and the article gives the example of the festivities in 2009 when "hundreds of thousands of Iranians threw Molotov cocktails and firecrackers in the streets to show their anger at the government". The comments reported from the head of security, Esail Ahmadi-Moghaddam, that "he didn't have a problem with people enjoying themselves but would arrest anyone who joins gatherings" has to be seen in this context. From the appellant's account his participation in the festival was not one involving people en masse but was a small gathering outside his parents' house. He does not describe any political element to the festivity. While the supreme leader (at A101) is reported as urging Iranians to shun the festival his admonition amounts to a mild warning only: "it is appropriate to avoid it" and the chief prosecutor in the city of Mashad warns that those who engage in disruptive behaviour during the festival would face "strong consequences." The corollary of this is that those who do not engage in disruptive behaviour would not face such consequences. The picture that emerges is of a reluctant toleration by the authorities of a festival that long predates Islam and which seems to be deeply rooted in Iranian society, and of the authorities' crackdown on behaviour that uses the festival as a pretext for political demonstration. I do not find it consistent with the country evidence that the appellant would have been arrested by the police for simply participating in the festival during a purely local event involving only some 15 people."

11. There is no doubt that the Judge considered the background evidence relied upon. Mr Gayle put the argument, that he now relies upon before me, to Judge Woolley as he makes clear at the beginning of paragraph 38. He no doubt had well in mind the general situation in Iran (see below at para 15). In my judgement, it was open to the Judge to prefer the interpretation of the background evidence put forward by the Presenting Officer at the hearing that, although arrests did take place at fire festival events, the real targets were those who were being disruptive or were, or were perceived as taking part in a political demonstration. The document referred to fire festivals which had been used as "an excuse for people to pour onto the streets en masse" (see page A98). Likewise, the document at A101 refers to a chief prosecutor warning that "strong consequences" would follow for those who engaged in "disruptive behaviour". The Judge was entitled to take into account what is reported as said by Ayatollah Ali Khamenei (at page A101) that reflects the Iranian authority's discouragement of individuals taking part in fire festivals but does not go so far as to suggest that, in the absence of political protest, arrest was likely.

12. Mr Gayle's submission embodies a disagreement in the interpretation of the background evidence from that placed upon it by the Judge. However, in my view the Judge's interpretation was properly open to him and that, therefore, he was entitled to take into account that the appellant's claimed arrest was not consistent with the background evidence.

13. Secondly, in relation to para 39 of the Judge's determination, Mr Gayle submitted that the Judge was wrong to take into account that the appellant was unable to produce a receipt for the 200,000 Tomans fine paid by the appellant's father, so the appellant claimed, to obtain his release following his arrest at the fire festival.

14. At para 39, the Judge dealt with the respondent's case concerning the absence of documentation concerning the appellant's arrest as follows:

> "The appellant says that he was arrested with about 4 other people and taken to the police station where he was abused, kicked, and where they cut his hair. He initially refused to sign any declaration but then his father arrived and paid a fine of 200,000 Tomans and persuaded him to sign a declaration stating that they had taken part in an illegal gathering. He was then released, and does not describe any conditions placed on his release (such as reporting) or any further harassment from the authorities even though they would have known of his identity. The appellant has not been able to provide any documentation about this arrest, such as a copy of the declaration, of the receipt of the 200,000 Tomans fine, or even of the withdrawal of such an amount of money from a bank. Mr Gayle pertinently observed that there was no evidence that the father would have had to withdraw the money from a bank and so the absence of a bank statement could not be held against the appellant. I find that this submission does have weight and I place no reliance on the lack of any bank statement. Similarly the respondent has suggested that the absence of police documentation is telling. I note however the country evidence about court and police documentation and that the knowledge about documentation is vague and tentative. There is no proof that the appellant would have been given anything in the way of official documentation on release to be able to show to the tribunal. The position is however different with the receipt. The appellant has said that his father was given a receipt for the payment (at Question 91) and I find therefore that this document not only existed but was in the hands of his father. Mr Gayle has suggested that there was no reason for his father to keep this receipt. I disagree. In a state such as Iran where the country evidence suggests corruption and venality at every level of the police force there would be every reason for the father to keep such a receipt to show that the fine had been paid and to guard against any future suggestion that it had not been. I do not find it credible that the appellant would not be in touch with his father or be able to route a request to him for the production of such a receipt. The absence of such a document when I have found it is available to produce is a factor which undermines the credibility of his whole account."

15. Mr Gayle repeats his submission, previously made to the Judge, that there was no reason for the appellant's father to keep this receipt. Mr Gayle's submission was rejected by the Judge and, in my view, he was entitled to do so. The Judge took into account, and it is not challenged, that the background evidence showed corruption within Iran and at every level of the police force. In the light of that, the Judge was entitled to infer that the appellant's father had every reason to keep the receipt should the payment of the fine ever be questioned in the future. This was a document which the appellant claimed existed. The Judge was entitled to take into account, as one of his reasons, that the appellant had not sought

to obtain this document from his father so as to support his case (see TK (Burundi) v SSHD [2009] EWCA Civ 40 at [16]).

16. Thirdly, Mr Gayle submitted that in para 40 of his determination the Judge had been wrong to take into account that, in his view, it was not credible that the appellant would not have talked to "M" about how "M" had come to be released and whether he had paid a fine. At para 40 the Judge said this:

> "The respondent has pointed to the vague and evasive nature of the appellant's replies when he was asked about [M]. I find that there is force in this criticism. On the appellant's own account he became close of [M] in the months following his release and I do not find it credible that they would not have talked of their experiences in police detention and that in the course of such conversations that the appellant would not have learnt a good deal about [M]'s release and whether he had had to pay a fine."

17. Mr Gayle submitted that the appellant could have lied and said that he had spoken about the circumstances of "M's" release in their conversations about their detention but he had not. Mr Gayle submitted that the matter had never been put to the appellant.

18. There is, in my judgement, nothing in this argument. The point was raised by the Secretary of State in para 21 of the refusal letter dated 3 June 2013 and so the appellant cannot be said to have been taken by surprise and it was dealt with in the appellant's witness statement in which he said that he had no reason to discuss the details of their respective releases with "M". The appellant's evidence was of a close friendship developing with "M" and, of course, on the appellant's account they shared a common political ideal and had both been detained in 2012 at the fire festival. It was, in my judgement, properly open to the Judge and not perverse for him to reject the appellant's explanation and to take into account that it was not credible that during their conversations the appellant would not have asked "M" or "M" would not have volunteered the circumstances of "M's" release from detention.

19. Fourthly, Mr Gayle submitted that the Judge was wrong in para 41 of his determination to take into account that, if the appellant had been detained, he would have been required to report back to the police station after release. The Judge said:

> "If he had been perceived as a threat I do not find that he would have been released without such sanctions."

20. Mr Gayle submitted that the appellant had never said that he was perceived to be an on-going threat to the authorities at this time. Whilst that might have been the appellant's evidence, the Judge was entitled to take the view that, if in fact the appellant had been arrested at a fire festival, it would have been because his involvement would have been because of the Iranian authorities' interest in him as someone engaged in anti-Islamic or anti-regime activity. It was properly open to the Judge, therefore, to infer that in those circumstances further sanctions, such as a

requirement to report back to the police station after release would have been applied. It was, after all, the appellant's case that he was only released because he signed a declaration that he was involved in an illegal gathering and a significant fine of 200,000 Tomans had to be paid by his father to release him. The Judge's conclusion at para 41 was not irrational or otherwise not open to him.

21. I now turn to the grounds relating to the Judge's finding in respect of the appellant's claimed membership of an illegal organisation that led to his home being raided and his father arrested.

22. First, Mr Gayle submitted that the Judge had committed three errors in para 43 of his determination. That paragraph is in the following terms:

> "The appellant has said that the organisation had no name and no HQ. While the absence of an HQ might be a sensible precaution I do not find it credible that the organisation itself would have no name. According to the appellant it published 5 leaflets in his time, on subjects varying from the treatment of Bahai's to the unequal treatment of women in Islam. If these leaflets were distributed in order to effect regime change I do not find it credible that the organisation would have been nameless, or that there would not even be a code name used by the appellant and "M" to signify their cause. According to the appellant "M" used to give him a memory stick and from this he downloaded the leaflets onto his computer and then printed them off. If "M" was sophisticated enough to possess a memory stick it is not explained by the appellant why "M" had to give this to the appellant for him to print off the leaflets, rather than printing off the leaflets himself. As the respondent points out in the refusal letter the downloading of the memory sticks, rather than printing directly off the memory stick and then deleting, created a needless security risk. 20 leaflets only were produced and distributed by the appellant and "M". No explanation was given of why such a tiny number of leaflets was produced and distributed, when there would have been no difficulty in producing and distributing a far larger quantity. The appellant has not said that he was ever tracked by the police in any of these activities, and on his own account he had no conditions attached to his release from detention after the fire festival incident (although I have not accepted his credibility in respect of that detention)."

23. Mr Gayle submitted that the appellant had given an explanation as to why he had only distributed a small number of leaflets. Mr Gayle referred me to the appellant's statement of 19 July 2013 (at P5 of the bundle) where at para 20 the appellant said:

> "I would like to point out that there were many 'cells' of anti-regime activists doing the same as us throughout Tehran. It was much safer to distribute small numbers of leaflets in a local area, than to try anything more ambitious. Anti-regime activity in Iran is very dangerous."

24. Mr Gayle submitted that the appellant had never been asked why he chose to download the leaflets onto his computer and print them rather than print them directly from the memory stick he claimed that was given to him by "M".

25. Mr Gayle submitted that it was perfectly understandable that the organisation had no name. There was, he submitted, no need for the group to be identified by name in order to pursue its aim.

26. As regards the latter challenge, the appellant claimed that there was an organisation that he belonged to through a "chain" connection with "M". It was, in my judgement, entirely open to the Judge to conclude that it was not credible that an organisation would have no name or identifying moniker of which the appellant would not be aware.

27. As regards the downloading of leaflets to the appellant's computer to print, that was a point directly raised by the respondent in the refusal letter (see para 26 of the refusal letter) and it was properly open to the Judge, given that this had been raised in that way, in the absence of any satisfactory explanation by the appellant to conclude that it cast doubt on the appellant's claim given the security implications there would be if the appellant's computer was obtained by the authorities in, for example, a raid on his home.

28. Whilst the Judge was wrong to state that the appellant had offered no explanation as to why a small number of leaflets were produced and distributed, this was a minor error in reasoning set amongst a detailed and multiple set of reason for disbelieving the appellant. In itself, it would not justify disturbing the Judge's adverse credibility finding.

29. Secondly, Mr Gayle challenged the Judge's reasoning in para 44.

30. He submitted that in para 44 the Judge had been wrong to doubt the appellant's evidence on the basis that he did not know why his home was raided or who carried out the raid. The underlying point made by the Judge is that the appellant's family engaged a lawyer to investigate the accusation and the appellant's father was held for two days. It was, in my judgement, entirely open to the Judge to call into question the veracity of the appellant's account on the basis that no information had been obtained despite the investigation by the lawyer engaged by the family and also that his father did not know who had detained him for two days.

31. Further, Mr Gayle submitted that in para 44 the Judge was wrong to take into account that the appellant's family members had not been harassed since his departure from Iran. Mr Gayle submitted that the Judge had been wrong to rely on the document at page A64 of the bundle as it dealt with the circumstances of family members of political activists under the heading "Issues Concerning Persons of Kurdish Origin". Mr Gayle submitted that this had no relevance to the appellant whose family were not Kurds or political activists who would, therefore, be regarded as opposed to the regime as well.

32. At para 44, Judge Woolley said this in relation to the absence of harassment of the appellant's family since he left:

> "The appellant has said that his family members have not been further harassed since his departure. It was suggested by Mr Gayle that family members are not generally targeted as if they were there would be more objective evidence. I find however that in respect of family members the objective evidence does suggest that they will be targeted. Thus at A64 of the bundle there is an account of 70 families of activists being contacted by authorities and of the threats made by the authorities to put family members behind bars if information cannot be provided about the wanted person."

33. It is unfortunate that the Judge referred to a section of the document beginning at A36 produced by the Danish Immigration Service which at A64 was concerned with the families of political activists in the Kurdish context. However, the document does deal with the "risk to family members" of political activists in general at page A70 of the bundle. There, it is stated that:

> "**Risk to family members**
>
> An international organization in Ankara informed the delegation that following the mass demonstrations in 2009, there were cases where the authorities had squeezed family members, including parents, sisters and brothers, in order to get to fugitives. It was explained that the intelligence services react differently in different areas of Iran. In some instances where family members are targeted, the authorities are doing this to create an example for others, and this is highly effective. The family members in Tehran are also at risk and they may be arbitrarily detained and mistreated in custody. While the number of such cases decreased after the crack-down following the post election demonstrations in 2009, however it was considered that these types of cases could still come up.
>
> It was added that a family member to an activist who has left the country might be summoned by the authorities."

34. In my judgement, the point made by Judge Woolley in para 44 concerning the absence of harassment of the appellant's family whilst not supported by the passage in the report to which he referred at A65 is supported by the passage at page A70. consequently, the Judge was entitled to take into account in doubting the appellant's account that his family members had not been harassed or contacted by the Iranian authorities following the appellant's departure if I indeed he was wanted by them as he claimed.

35. Finally, in relation to para 44 Mr Gayle submitted that the Judge had misinterpreted the appellant's evidence concerning the circumstances of his father's release from detention and had, therefore, misapplied the objective evidence set out in the *COI Report* at para 11.57 that the appellant's father would have been handed any arrest warrant in relation to the appellant. At para 44 the Judge said this:

> "…While I have referred above the COIS and its somewhat vague and tentative conclusions about court documentation in Iran one point on which it is clear is that arrest warrants can be handed to members of the family if they are likely to know of the accuser's person's whereabouts (see COIS dated 2013/1 at 11.57 – "the members of the family cannot be

> served instead of the accused unless they acknowledge that they are aware of the whereabouts of the accused and undertake to deliver the notice/summons to the accused"). Here the appellant's account is that his father was released on the condition that he informed the authorities where his son was and so it is I find likely that he would have been handed any warrant produced. The fact that no arrest warrant has been produced by the appellant, when in his circumstances his family would have been provided with a copy of it, leads me to find that no arrest warrant was actually ever in force for the appellant."

36. Mr Hibbs acknowledged that the Judge had misstated or misunderstood the appellant's evidence concerning his father's release. At para 12 of the appellant's statement the appellant had said that his father had given an undertaking to surrender the appellant to the authorities if he came home. He did not say that the his father was released because he knew about the appellant's whereabouts. Further, the *COI Report* at para 11.57 only stated that

> "the members of the family cannot be serviced instead of the accused unless they acknowledge that they are aware of the whereabouts of the accused and they will undertake to deliver the notice/summons to the accused".

37. Somewhat confusing that report continues:

> "In principal (sic) in criminal cases, the substituted service through members of the family is not acceptable. If the accused cannot be found, the arrest warrant will be passed on to law enforcement officers to arrest the accused whenever and wherever his found."

38. I accept Mr Gayle's submission that Judge Woolley did misunderstand the appellant's evidence and, therefore, was wrong to conclude that on release he would have been handed any arrest warrant in relation to the appellant.

39. The crucial question remains whether that error was material to the Judge's decision.

40. In my judgement, the error was not material. Standing back and looking at the Judge's reasons overall, he gave a number of detailed reasons between para 38 and 44 for rejecting the appellant's account of his arrest and detention at the fire festival in 2012 and, as a result of that, his developing friendship with "M" who introduced him to the unnamed illegal organisation and rejecting the appellant's evidence in relation to that and his claimed subsequent raid on his house. Looking at those reasons overall, I am satisfied that the Judge's adverse findings are sound and should stand.

Decision

41. For these reasons, the First-tier Tribunal's decision dismissing the appellant's appeal on all grounds did not involve the making of an error of law such that the decision should be set aside. The decision stands.

42. The appellant's appeal to the Upper Tribunal is dismissed.

Signed

A Grubb
Judge of the Upper Tribunal

Date: