Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/04423/2014**

THE IMMIGRATION ACTS

Heard at Field House
On 21 April 2015

Determination Promulgated
On 27 April 2015

Before

Upper Tribunal Judge Southern

Between

MOLOUD TAVAKOLI MOGHADDAM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Nr T. D. H. Hodson of Elder Rahimi solicitors
For the Respondent: Ms A. Figiwala, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who is a citizen of Iran born on 7 March 1952, arrived in the United Kingdom in December 2012 and was admitted as a visitor. She had travelled from Iran with her husband. They had both secured entry clearance before departure and had travelled upon their own valid Iranian passports. The purpose of applying for that entry clearance was to visit their relatives in the United Kingdom.

2. The appellant overstayed her leave and, in March 2013, claimed asylum. She has now been granted permission to appeal against the decision of First-tier Tribunal Judge Herlihy who, by a determination promulgated on 22 September 2014, dismissed her appeal against the immigration decision that accompanied refusal of her asylum and human rights claim.

3. For present purposes the following summary of the appellant's claim will suffice.

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4. The appellant is a retired schoolteacher who lived with her husband their home in Rasd in Iran. Neither she nor her husband have engaged in any political activities in Iran or anywhere else. Several months before travelling to the United Kingdom as a visitor she received telephone calls from the Iranian authorities on three consecutive days asking about whether she had been "in touch with the Voice of America". She was then called about a satellite dish installed at her home and was asked to attend their offices. When she attended as instructed she was questioned for about three hours and when she refused to sign a statement confirming that she would not again contact the Voice of America she was hit on the back of her head. She was released after having agreed to surrender her satellite equipment but she installed another set about a month later.

5. The appellant experienced no further difficulties after that. Having secured entry clearance, she and her husband travelled to the United Kingdom in December 2012. On 19 February 2013 she received a telephone call from her sister in Iran informing her that her nephew, who was politically active in Iran, had been arrested together with some friends and the authorities had removed some equipment from the appellant's house. Her house was sealed up by the authorities and, as a result, the appellant says that her life is at risk from the authorities should she return to Iran.

6. The respondent rejected that claim on the basis that it was not accepted that the appellant had given a truthful account of her experiences in Iran. The respondent said that even if it were accepted that the appellant's house in Iran had been raided and her nephew arrested, this did not give rise to any risk for the appellant or her husband as they have no political profile and so would be of no adverse interest to the authorities.

7. The judge, having heard oral evidence from the appellant and from her husband did not accept that the appellant had a well founded risk from the authorities. Although the judge concluded that:

   > "… I have not found the Appellant's claim to be credible…",

   she did not reject the appellant's account in its entirety. The judge accepted that the appellant had been questioned about her satellite system and about some telephone calls to an American TV channel and to a friend in America, so that anyone checking her calls would see that calls had been made to America. But the judge did not accept that the appellant had been ill-treated when she attended the offices to be questioned about her satellite system because the evidence provided by her and her husband about her injuries was inconsistent and contradictory. Further, if the appellant had been subjected to violent ill-treatment on account of her use of this equipment the judge did not accept it to be credible that she would have replaced the surrendered equipment as quickly as she did. The appellant had produced some medical evidence from Iran about treatment received for a detached retina but this did not support the claim that this injury had been sustained in the manner claimed. The judge was reinforced in her conclusion that the applicant was of no adverse interest to the authorities because she and her husband were able to leave Iran through normal emigration channels using their own passports.

8. The judge did not find credible either the appellant's claim that she is of adverse interest to the authorities because her nephew and his friends had been arrested at her home because this was speculation on the appellant's behalf, the letters she produced from relatives being "self-serving" and lacking in detail. The judge found it notable that, despite the resources available to the appellant, there was no evidence that family members in Iran had enquired as to whether an arrest warrant had been issued.

9. Drawing these findings together, the judge concluded that the family history of migration was relevant:

> "I am struck by the Appellant's family history and circumstances and note that all of her three children are no longer living in Iran and left Iran many years ago. Two of them are now British citizens, her eldest son having come to the UK and claimed asylum and eventually having been granted indefinite leave to remain and another son has been a student and working in Germany for the last 8 years. The appellant and her husband have frequently travelled to and from the UK and have never in the past experienced any problems with the authorities and I find it likely that the appellant has been motivated to make the claim for asylum as she and her husband are now separated from their children and wished to remain here in order to be close to them."

   And the judge added:

> "Even if it was accepted that the Appellant's house had been raided and the Appellant's nephew arrested, which I do not accept, I concur with the respondent in finding that the authorities would have no interest in the appellant or her husband bearing in mind that they do not have a political profile at all nor have they demonstrated any political involvement whilst living in Iran."

10. For these reasons, the judge dismissed the appeal.

11. In granting permission to appeal to the Upper Tribunal, Upper Tribunal Judge Chalkley said, the emphasis being his own:

> "I am persuaded that it is properly arguable that some of the reasons for some of First-tier Tribunal Judge Herlihy's findings *may* not be entirely adequate."

12. In fact, the grounds raise seven different complaints about the findings of the judge. In his submissions on behalf of the appellant Mr Hodson adopted those grounds and sought to expand upon them.

13. First, at paragraph 40 of the determination the judge accepted that the appellant had been questioned by the authorities but at paragraph 41 did not accept that she replaced the confiscated satellite equipment a month later. This was said to be a finding not reasonably open to the judge as the country evidence showed that although illegal, about 60% of households in Tehran have a satellite system. That challenge is misconceived. The point being made by the judge, which was plainly open to her, was not that it was lacking in credibility that the appellant would have a satellite system, as did 60% of households, but that it was lacking in credibility that she would replace a confiscated system so soon after having been called into the offices of the security services, questioned about her use of such equipment and beaten about the head with such violence as to cause a detached retina. The fact

that she did so led the judge to find her account of the ill-treatment to be lacking in credibility.

14. The second complaint is that the judge fell into legal error in basing her adverse credibility findings upon the absence of medical evidence to confirm that the injury suffered by the appellant was caused in the manner claimed. Mr Hodson submitted that the judge was wrong to demand this, as the evidence was offered simply to demonstrate that the appellant was treated at about the time she says she sustained the injury. The grounds assert that it is entirely unsurprising that the medical evidence from Iran that was submitted did not confirm the cause of the injury because:

> “The JFtT ought to be aware that doctors in Iran are extremely reluctant [to] provide evidence suggestive of official involvement in the mistreatment of detainees. Iranian doctors who do provide such evidence are putting their own lives at risk.”

But it is not apparent that any evidential basis for that was before the judge or, indeed, that such a submission was advanced at all.

15. In any event, this is to misrepresent what the judge has said about this. She wrote at paragraph 42 of the determination:

> “The Appellant submitted some medical notes she brought with her from Iran to show she had treatment for a detached retina. However only parts of the notes have been translated and although they refer to Barrier Laser treatment there is no evidence that this was undertaken because of a detached retina; the notes refer to a reduction in right eye sight. There was no medical report to support the appellant's claim that the detached retina which she claims she suffered was caused in the manner which she claims.”

It cannot be said that the judge based adverse credibility finding upon the absence of relevant medical evidence. Here, the judge is doing no more than to look carefully at the medical evidence to see if anything could be drawn from it to support the appellant’s account. She was plainly entitled to conclude that it did not.

16. The third challenge to be drawn from the grounds is that the judge was wrong to reject the letters provided by the appellant’s sisters in Iran on the basis that they were “self serving” and “contain no context in which the contents can be assessed and provide almost no details” because those letters in fact contained a great deal of detail relating directly to the appellant’s claim. The letters spoke about the appellant’s home being raided, her nephew being arrested, items being seized from her home by the authorities, her neighbours being questioned and her home being under surveillance. A second letter provided further detail about the fate of the arrested nephew and said that another nephew who attempted to visit the appellant’s home was told by the porter that the appellant was considered to be an “anti-regime activist”. The grounds characterise those two letters as “compelling corroborative evidence of the core of the Appellant’s claim” and assert that the judge erred in failing to provide any sustainable reasons for finding that no weight could be placed on them.

17. It is fair to say that the judge dealt with this aspect of the evidence briefly. At paragraph 44 of the determination she said:

> "In support of her claim the Appellant has produced two letters from her sisters, Iran and Touran. However, I have not found these letters to assist the appellant in establishing her claim and find they are self-serving. The letters contain no context in which the contents can be assessed and provide almost no details."

and at paragraph 46:

> "I find that the claims made in the letters are unsupported and are self-serving. If the Appellant's nephew had been politically active as claimed, I do not find it credible that this would not have been known to the appellant or her sister, his mother."

18. The difficulty with that challenge is that the letters were simply that. They were pieces of evidence about which the judge had to make of what she could. The weight to be attached to them was a matter for the judge. This was not evidence presented in the form of a witness statement, which would mean that the maker of the statement would be aware that the information imparted was to be used in proceedings. There was, obviously, no opportunity for that evidence to be tested in cross examination. It cannot sensibly be suggested that the fact of someone not before the court having written about events in a letter meant that the judge was obliged to accept that what was said was true. It is not apparent upon what basis these two letters can justifiably be regarded as "compelling corrobative evidence". The parties cannot expect more of the judge than that she assesses that evidence in the context of the evidence as a whole, which is precisely what she has done. Mr Hodson realistically accepted that the judge was not bound to accept what was said in those letters. He submitted, though, that the judge did have to recognise that this was evidence supportive of the appellant's claim and to give some weight to it. In my judgement that is precisely what she did, and she was entitled to conclude that very little weight could be given to this evidence

19. The fourth issue raised in the grounds concerns the appellant's evidence that a warrant for her arrest had been issued in Iran. The grounds complain that in basing an adverse credibility finding concerning that upon the appellant's failure to provide evidence that a warrant had been issued, the judge erred in law in placing an unreasonable evidential burden upon the appellant because the country evidence indicates that arrest warrants are often not issued so that it would be impossible for the appellant to provide evidence that it had been. But, again, that is to misrepresent what the judge said about that. At paragraph 46 of the determination the judge observed that:

> "… the appellant and her husband have many family members living in Rashd who could have made enquiries as to whether an arrest warrant had been issued…"

from which it is clear that the judge was not here demanding that a copy of the warrant itself must be provided if the appellant's evidence that her arrest had been authorised was to be accepted but that, if true, it was reasonable to expect that some enquiry could and would have been made by relatives about this. Although the appellant, in evidence felt unable to say whether or not there was an arrest warrant at her house, it was the oral evidence of the appellant's husband that he was sure that arrest warrants had been issued against them. It was open to the judge to find the uncertainty as to whether or not warrants had been issued to be lacking in credibility.

20. Next, it is asserted that the judge erred in saying that the appellant had provided no explanation for being of interest to the Iranian authorities, given that she was in the United Kingdom and so not in Iran at the time of her nephew's address. That is because the appellant in fact had given three reasons: The activities attracting interest in her nephew took place at her home; that she had been questioned about her satellite system and about having made telephone calls to America meant that she did have a "profile" with the authorities and she had breached her undertaking concerning the satellite system by replacing the one that was confiscated.

21. Again, it is important to identify what the judge actually said. This challenge appears to be focussed upon paragraph 46 of the determination and the observation made by the judge:

> "The Appellant has offered no explanation as to why the authorities would consider that she [was] in any way implicated in her nephew's activities, given that the claimed arrest too place when she and her husband had been absent from their home for many months."

Thus, again, the grounds do not accurately represent what the judge has said. This was not a finding that the appellant had not come to the attention of the authorities at all. The judge accepted that there was no reason to doubt her account of being questioned about her use of the satellite system. Here the point the judge was making, and was entitled to make, was that it was claimed that the interest of the authorities had been generated not by those matters but by the activities of the appellant's nephew which the appellant clearly had nothing to do with as she had been out of the country for many months. It was open to the judge to place weight upon the fact that the appellant had offered nothing to suggest that she might reasonably be associated with the activities of her nephew.

22. The sixth complaint raised by the grounds is that the finding made by the judge that if the appellant's nephew had in fact been involved with anti regime activities, it was not credible that neither the appellant nor her sister was aware of that was a perverse one. That is because the grounds assert that it is "highly unlikely" that the nephew would have informed his mother or the appellant of his anti-regime activities. The judge, though, did not say that it was not credible that the nephew would not have told the appellant or his own mother about his activities but that it was not credible that this would not have been known to his mother. There is an important difference between those two articulations of this issue and the judge, having heard oral evidence from the appellant and her husband, was best placed to make such an assessment and no perversity is disclosed by the way in which she has expressed her view about this.

23. Finally, the grounds criticise the finding in paragraph 47 that if the appellant's nephew had been arrested during a raid on her home the appellant could defend herself against any accusation of involvement with his activities because she was at the time in the United Kingdom and because she had no profile with the authorities. To some extent this ground overlaps the complaints discussed above when considering the fifth issue raised by the grounds. The grounds do not accurately reflect the approach of the judge. She did not proceed on the basis that the appellant was a person with no profile at all, because she accepted that she had been questioned in the past. The point being made is that she had no political

profile, a qualifying term omitted from the grounds. That, taken together from her lengthy absence from Iran, was sufficient to support the finding of the judge that, even if the nephew had been arrested, that did not mean that the appellant faced a real risk of being implicated in his activities. But, of course, that as a finding in the alternative. The primary finding of the judge is that the account of the nephew's arrest was untrue.

24. For all of these reasons, although Mr Hodson has advanced and developed the grounds in the most attractive way possible, I am satisfied that the grounds fail to identify any error of law in the determination. The judge has weighed together all of the evidence the parties chose to put before her and has given clear and legally sufficient reasons for reaching conclusions that were open to her on the evidence.

Summary of decision:

25. The Judge of the First-tier Tribunal made no error of law and the determination shall stand.

26. The appeal to the Upper Tribunal is dismissed.

Signed

Upper Tribunal Judge Southern

Date: 21 April 2015