Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03650/2013

THE IMMIGRATION ACTS

Dictated at North Shields
On 23rd August, 2013

Determination Promulgated

……

Before

Upper Tribunal Judge Chalkley

Between

HOSSEIN NOORI-SHORABOLIA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: *Ms S Harrison, an assistant solicitor with Haliday Reeves*
For the Respondent: *Mr C Dewison, a Home Office Presenting Officer*

DETERMINATION AND REASONS

1. The appellant is a citizen of Iran who was born on 11 September, 1985. He arrived in the United Kingdom on 1 March, 2013 and was arrested by police after exiting a vehicle at the M60 northbound services in Staffordshire. He claimed asylum on the same day.

2. The Secretary of State decided on 28 March, 2013. to remove the appellant as an illegal entrant and the appellant appealed this decision to the First-tier Tribunal. His appeal was heard at Bradford on 6th June, 2013, by First-tier Tribunal Judge Hindson.

3. At paragraph 25 of the judge's determination the judge records what the appellant said during the course of his asylum interview. He claimed that he was a plasterer and a customer approached him to design a cross. This was in January or February of this year. He and his worker were at the customer's house making a mould. He was upstairs and his customer was downstairs. The authorities raided the customer's house, they beat the appellant's co-worker who was shouting for the appellant. The appellant claimed that the police came upstairs, but he escaped.

4. The judge noted that during the course of his asylum interview, the appellant gave an entirely different account. He claimed during his asylum interview that he was on his way to work and from the top of the street he saw the security forces at a house belonging to a customer and he saw his employee being arrested. When it was put to him at interview, the appellant denied that this had happened during the month of Bahman, January or February 2013. He said that the version given in the screening interview was not correct. During cross-examination, the appellant explained the inconsistency as being due to an interpreter error. The judge did not accept that.

5. The judge found that the appellant is a citizen of Iran. He found that the appellant may or may not be a plasterer by trade but that he was not commissioned to construct crosses for his customer Mr Reza as he had claimed. At paragraph 32 the judge went on to find that the authorities did not arrest the appellant's employee or raid the family home, seizing incriminating religious material. He found that the appellant did not have a genuine interest in Christianity or a genuine intention to convert and that the appellant's interest in Christianity was a simple attempt to bolster his asylum claim. The judge went on to find that the appellant had not told the truth in any material aspect of his claim and found that the appellant was an economic migrant who had come to the United Kingdom to have a better life. At paragraph 32, subparagraph 8, the judge said "I find that the appellant is of no interest to the Iranian authorities and would not be at risk of harm by returning to Iran as a failed asylum seeker per se". The judge dismissed the appeal.

6. First-tier Tribunal Judge Kimnell granted permission to appeal and said the second ground complained that the determination is silent as to the risk to a failed asylum seeker on return to Iran. That is not in fact correct; the judge specifically recorded at paragraph 32(8) that the appellant would not be at risk as a failed asylum seeker per se. The judge did not, however, give any reason for that conclusion. The Record of Proceedings shows that a submission was made on the risk on return, even if the appellant were found not to be credible. That argument has not been properly addressed.

7. Addressing me today, Ms Harrison for the appellant pointed out that detailed evidence of risk on return as a failed asylum seeker was highlighted in a skeleton argument in the appellant's bundle. At page 19 of that skeleton argument, the Country of Origin Information Report is quoted and it is suggested that Iranians are likely to face charges for violations of Iranian law committed outside Iran, and that failed asylum seekers could be prosecuted for making up accounts of alleged persecution. She submitted that that evidence was more recent than the country guidance case of *SB (risk on return – illegal exit) Iran CG* [2009] UKAIT 53. As a result the judge should have dealt with it, but did not.

8. Mr Dewison, who appeared on behalf of the Home Office, relied on a Rule 24 response which suggested that the finding on risk on return is supported by the country guidance, and having found that the appellant was not a witness of truth it was implicit that any error that there might be would not be material, because it could not affect the outcome of the appeal in any event. He suggested that the authorities clearly were found to have no interest in the appellant and that the judge must have had *SB* in mind when he made his findings. The skeleton argument, which in fact is nothing less than a written submission contained within the appellant's bundle, does rely on the Country of Origin Information Report, which does appear to contain evidence published in a daily newspaper by the Iranian government on 17th February, 2011. It does not appear in the Appendix of background material set out by the Tribunal in *SB* and should I believe therefore have been dealt with by the judge.

9. In this respect I believe that the judge's determination does contain a material error of law. I believe that it was an error on the part of the judge not to give reasons for finding that the appellant would not be at risk as a failed asylum seeker and for not having dealt with the evidence contained in the Country of Origin Information Report, an extract of which was set out in the written submissions made on the appellant's behalf.

10. I understand it is the practice of the appellant's solicitors not to put before the judge full copies of the reports that they rely on. That, it seems to me, is a dangerous practice.

11. The judge had before him a written submission which, starting at page 17, contained an extract from the Country of Origin Information Report. It refers to paragraph 32.27 of the report, as quoting an Amnesty International report, where an article was written by a former Supreme Court judge in Iran, published in a daily newspaper by the Iranian government in February, 2011, suggesting that existing laws enable Iran's judiciary to bring charges against Iranians for alleged violations of Iranian law committed whilst outside Iran. The article stated that failed asylum seekers could be prosecuted for making up accounts of alleged persecution. I believe that the judge should have dealt with this. I preserve the judge's findings since they are not challenged.

12. At paragraph 33 of *SB* the Tribunal quote from the 2001 Amnesty International report. They say:-

> "33. Mention should also be made of a 2001 Amnesty International report entitled 'Iran: A legal system that fails to protect freedom of expression and association', discussing laws used in Iran to silence dissent. Although now an old report, it is still seen by Dr Kakhki and leading reports as reflecting the current position. It states:
>
> > 'At least nine laws, many of which are vague and overlap, deal with criticism, insult and defamation notably of state officials; and at least one deals with the dissemination of "false information". The punishments for such charges include imprisonment and the cruel, inhuman and degrading punishment of flogging ….
> >
> > The Penal Code addresses the issues of criticism and insult in the vaguely worded Articles 514, 608 and 609. Article 514 singles out "insults" made against the late Ayatollah Ruhollah Khomeini, the first Leader of the Islamic Republic of Iran, Article 608 provides for flogging and a fine as punishment for "insulting others, such as using foul language or indecent words…" Article 609 states that criticism of a wide range of state officials in connection with carrying out their work can be punished by a fine, 74 lashes or between three and six months' imprisonment for insult. Once again, the Penal Code provides no guidance regarding what determines "criticism" or "insult".
> >
> > Article 697 of the Penal Code considers defamation. It states that if an individual makes allegations of an act that "can be considered an offence according to law", but cannot prove that it is true, that person will be sentenced to between one month and one year's imprisonment or 74 lashes or a sentence combining the two. However, if the statements are proven, but the judge concludes that it is a "propagation of obscenities", the person will also be sentenced.
> >
> > Article 698 concerns the dissemination of false information or rumours with the intention of causing anxiety or unease in the public's mind. This is punishable by flogging or imprisonment. In October 2001, Fatemeh Govar'i [f], a journalist and member of the Dr 'Ali Shariati Cultural Studies Centre (*Daftar-e Pajohesh-ha-ye Farhangi-ye Doktor 'Ali Shari'ati),* was sentenced to six months' imprisonment and 50 lashes by a General court in Qazvin, in central Iran, for charges including "spreading falsehood" in connection with an interview she gave to the weekly journal, *Velayat-e-Qazvin*…'"

13. The Tribunal did consider Article 697 of the Penal Code, which states that if an individual makes allegations of an act which could be considered an offence according to law, then he commits an offence.

14. The extract of the Country of Origin Information Report which appears at page 18 of the skeleton argument quotes Section 32.27 of the Country of Origin Information Report, which records the Amnesty International report. The report suggests that the Iranian authorities are concerned to see whether or not appellants have been political activists in Iran or abroad. It also suggests that they will be detained for a few days until the police are satisfied that they have not been involved in political activity. The article written by the Supreme Court judge, which appeared in the newspaper on 17th February, 2011, referred to Iran's existing laws, and I believe that this is a reference to Article 697 which ***was*** considered by *SB*. The article does not suggest that there have been any new laws which might be used to prosecute failed asylum seekers. The judge is highlighting the situation under existing laws in Iran. The authorities may very well decide to prosecute failed asylum seekers for making up

accounts of 'alleged persecution'. However, this appellant has ***never*** been persecuted in Iran. His account was found to be false. The judge had found that he had not told the truth in any material aspect of his claim, and that he would not be of any interest to the Iranian authorities.

15. The skeleton argument submitted for the hearing before the Upper Tribunal suggests that in the context of *HJ* the appellant will not be expected to lie about details of his asylum claim. If questioned on return by the Iranian authorities about his asylum claim the appellant will be able to say, without telling any untruths, that in Great Britain he made up a false account of having converted to Christianity, but was not believed. The Iranian authorities will have no reason at all to prosecute the appellant because he has not alleged that he was persecuted in Iran.

16. The Tribunal in *SB* clearly did consider Article 697 of the penal code and considered the objective evidence following events in 2009. They said at paragraph 51:

> "Given that the government has demonised Britain, we would have expected that if returnees from the UK generally were meeting with difficulties, there would have been significant documentation in background sources. If the diplomatic editor of Kayhan in June/July was investigating claims that a number of British Iranians have 'disappeared' since the elections in June, it seems to us significant that several months later nothing further has come to light to indicate that those investigations produced anything of note. The evidence afforded by the above examples is far more consistent with an interference that it is only persons who are considered to have some political profile connected with recent events who now face a greater risk on return. For these reasons we do not think it would be justifiable to describe 'being a returnee from the UK' or some such category even as a risk factor."

17. At paragraph 53 the Tribunal said:

> "53. We do not seek in this determination to conduct a comprehensive review of existing Tribunal country guidance on Iran. However, we are satisfied from the ground we have had to traverse in order to deal with the appellant's case, that it is possible to say the following, by way of summary on issues of risk on return:
>
> (i) Events in Iran following the 12 June 2009 presidential elections have led to a government crackdown on persons seen to be opposed to the present government and the Iranian judiciary has become even less independent. Persons who are likely to be perceived by the authorities in Iran as being actively associated with protests against the June 12 election results may face a real risk of persecution or ill treatment, although much will depend on the particular circumstances.
>
> (ii) Iranians facing enforced return do not in general face a real risk of persecution or ill-treatment. That remains the case even if they exited Iran illegally. Having exited illegally Iran is not a significant risk factor, although if it is the case that a person would face difficulties with the authorities for other reasons, such a history could be a factor adding to the level of difficulties he or she is likely to face.
>
> (iii) Being a person who has left Iran when facing court proceedings (other than ordinary civil proceedings) is a risk factor, although much will depend on the particular facts relating to the nature of the offence(s) involved and other

circumstances. The more the offences for which a person faces trial are likely to be viewed as political, the greater the level of risk likely to arise as a result. Given the emphasis placed both by the expert report from Dr Kakhki and the April 2009 Danish fact-finding report's sources on the degree of risk varying according to the nature of the court proceedings, being involved in ongoing court proceedings is not in itself something that will automatically result in ill-treatment; rather it is properly to be considered as a risk factor to be taken into account along with others.

(iv) Being a person involved in court proceedings in Iran who has engaged in conduct likely to be seen as insulting either to the judiciary or the justice system or the government or to Islam constitutes another risk factor indicating an increased level of risk of persecution or ill treatment on return.

(v) Being accused of anti-Islamic conduct likewise also constitutes a significant risk factor.

(vi) This case replaces AD (Risk-Illegal Departure) Iran CG [2003] UKAIT 00107."

18. There was no evidence before the judge that there had been any prosecutions of failed asylum seekers for making up accounts of alleged persecution.

19. I am satisfied on the evidence before me that simply having made up the accounts he gave during his screening interview and the different account he gave at his asylum interview, will not cause the appellant to be at any risk on return for alleged violations of Iranian law committed while outside Iran. The appellant has not made up an account of alleged persecution.

Conclusion

20. First-tier Tribunal Judge Hindson made an error on a point of law in his determination by failing to give reasons for finding that the appellant would not be at risk as a failed asylum seeker on return to Iran. I set aside that decision and substitute it with mine. My decision is that the appellant will not be at risk as a failed asylum seeker on return to Iran for the reasons I have given. I have preserved the findings of the First-tier Tribunal. **This appeal is dismissed**.

Upper Tribunal Judge Chalkley