Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05261/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 20 November 2014	**On 8 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

M M

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

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

DECISION AND REASONS

There is an anonymity direction in relation to the appellant in this case and I order that this continues pursuant to Rule 14 of the 2008 Procedure Rules. The Appellant is granted anonymity throughout these proceedings, unless and until a Tribunal or court directs

otherwise. No report of these proceedings shall directly or indirectly identify him or any member of their 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.

1. The appellant is a citizen of Iran and her date of birth is 16 September 1985.

2. The appellant came to the UK on 3 January 2010 having been granted a student visa. She made an application for asylum on 3 March 2011 and this was refused in a decision of 26 April 2011. She appealed against this decision and her appeal was dismissed on 27 June 2011 by the First-tier Tribunal. The appellant successfully applied for permission to appeal and the decision of the First-tier Tribunal was set aside. The decision was remade in the Upper Tribunal by Deputy Upper Tribunal Judge Plimmer who dismissed the appellant's appeal.

3. The appellant made a fresh claim for asylum and this was refused by the respondent in a decision of 9 July 2014. She submitted a document that was issued on 25 December 2011 by the Islamic Revolutionary Court of the city of Orumieh which is a court verdict against the appellant. She submitted a warning notice or summons issued against her on 3 December 2011 summoning her to attend court on 25 December 2011. She submitted a property ownership deed in relation to her father's property which according to her was put up as surety for her release on bail in 2009. She had not submitted these documents previously.

4. The appellant appealed against the decision of the Secretary of State and her appeal was dismissed by Judge of the First-tier Tribunal Amin having been heard as a fast-track appeal on 1 September 2014. On this occasion the appellant was represented by Mr K Gayle and Mr K Williams represented the Home Office. The appellant successfully applied for permission to appeal against the decision of First-tier Tribunal Judge Amin. Permission was granted by First-tier Tribunal Judge Cheales in a decision of 20 October 2014.

5. The basis of the appellant's claim is that she is an Iranian Kurd from Mahabad. She started a blog in 2008 which led to her arrest on 15 June 2009 as the result of her attending a post-election demonstration. She was ill-treated and raped during detention and subsequently released without charge when her father put his house up as surety. In February 2011 the blog was traced and made inaccessible.

The Findings of the FtT

6. The Judge refused an adjournment application by the appellant. The relevant paragraphs are as follows:

"14. Mr Gayle, on behalf of the Appellant made an application to adjourn the proceedings at the outset of the hearing under Rule 21 of the 2005 Rules. His reasons for the application were:

a. That he did not believe that I can determine the appeal justly today because the Appellant wishes to rely on Psychotherapist's evidence in support of her asylum appeal;

b. that the Appellant had referred to ongoing sessions with the psychotherapists in her witness statement (p.2) (although I noted these were with a psychiatrist);

c. That the Appellant was very vulnerable following the traumatic events in Iran and in particular as her account was not believed on the last appeal.

19. Having heard the arguments on both sides I refused the adjournment because Mr Gayle had not shown good reason as to why the adjournment should be granted. He had provided some evidence (email dated 28 August 2014) in support of his application. I was satisfied that the appeal can be justly determined today not least because the solicitors have been acting for this Appellant since at least 2011 and have had the benefit of the same counsel.

20. As Mr Gayle pointed out the Appellant raised her mental health issue in her Asylum Interview (A1) on 7 April 2011 so the solicitors would have been on notice to explore that avenue at that time. Some three years have now passed and the application is made late in the day on the door of the hearing. I also note that the Appellant was at liberty to give evidence at the hearing about her treatment and matters relating to her ongoing mental health issues. For all these reasons the adjournment was refused."

52. I have considered all the evidence before reaching any conclusion in this appeal. I bear in mind that inconsistencies may arise in evidence for many reasons and are not necessarily indicative of an account that has been fabricated or embellished. I have endeavoured to set the Appellant's account in the context of the country condition in Iran.

53. I am bound to consider Section 8 of the 2004 Act and to take account of any behaviour that is damaging to the Appellant's credibility to which the section applies when deciding whether to believe a statement made by or on behalf of a person who makes the asylum claim. The Section applies to 'deceptive conduct' and 'late claims'.

54. As noted and accepted by both sides, my starting point in this appeal is the decision of Judge Plimmer (**Devaseelan [2002] UKIAT 00702**.

55. The Respondent dealt with the property deed in its refusal letter (page 6 of 12, paragraphs 20-24) and relying on Judge Plimmer's assessment of the Appellant's core claim of what happened to her in Iran, rejected her account.

56. The Appellant has merely repeated her evidence that she relied upon as to what happened to her in Iran (see previous statements of evidence adopted today as evidence in chief). This was the same evidence that was put before Judge Plimmer and which he rejected in paragraph 28 of that determination and cited in paragraph 22 of the refusal letter. There is no new evidence put before me and the property deed was part of the evidence before Judge Plimmer. On the contrary, the Appellant is not credible in my view, in her evidence about the property in question.

57. I do not accept Mr Gayle's submissions that the vague evidence or lack of details is due to the mental state of the Appellant. Mr Gayle went much further in his closing submissions on the reasons for seeking medical evidence than he did when he made the application to adjourn. None of these detailed arguments were advanced in support of his adjournment application. I saw and observed the Appellant give evidence. She was able to give evidence and answer questions put to her without any particular difficulty, albeit through an interpreter.

58. I therefore find that Judge Plimmer's findings in relation to the Appellant's detention claim in 2009 or the issuing of a summons against her and her father's infrequent interrogation are credible for the reasons set out by Judge Plimmer. She was not detained or raped in detention. No further new evidence or facts have been put before me today to dislodge those findings.

59. The Appellant's evidence on the details of the property and what has happened to the property leads me to further doubt her evidence about her detention and this undermines her credibility further. She was not able to provide an address for the property; she was not able to explain the size of the property. This is notwithstanding that she is in regular contact with her sister. The Appellant could have produced this evidence earlier to Judge Plimmer but failed to do so. She has not provided a reasonable explanation for the delay in producing this document and this undermines her credibility under Section 8.

60. In relation to the lack of bail documents Judge Plimmer dealt with this in paragraph 23 of her determination. The Appellant relied today on a warning notice issued against her on 3 December 2011 requesting her to attend court on 25 December 2011. I find the Appellant's evidence inconsistent. She told me that she obtained these documents from her sister. Judge Plimmer noted at paragraph 23 of her determination that the Appellant had indicated in her June 2011 statement that she was going to ask her father if he had anything and that she would have it sent if available. The Appellant told Judge Plimmer that her father did not know about her asylum claim made in 2011. Judge Plimmer noted that this was inconsistent with her earlier evidence that she was going to ask her father to produce the warning notices and moreover her sister did not have the bail documents.

61. Today the Appellant told me that her father had stopped speaking to her in 2011 and had disowned her around that time. The Appellant in fact stated that her sister was the one who obtained the property documents and informed her about the bail documents and made arrangements to send these to her. These inconsistencies are significant and undermine her credibility and affect the core asylum claim. I place very little weight on the warning notice / summons as the Appellant.

62. I do not accept the Appellant's evidence that she did not appeal the conviction in her absence. The Appellant is an intelligent and well educated woman. She did not even attempt to appeal the conviction and this leads me to doubt whether she has been convicted in her absence. Furthermore, there was a delay in the Appellant making an asylum claim and her timing for claiming asylum on the first occasion coincided with the expiry of the appellant's extended period of leave to remain (as noted by Judge Plimmer, paragraph 25).

63. I have taken all the evidence in the round and the documents which also need to be considered in the round and in the context of the appellant's evidence and the background evidence. Background evidence demonstrates that such documents are easily obtainable in Iran and the fact that an envelope was produced today does not demonstrate that the contents of the envelope were the ones produced to the Hearing.

64. For all these reasons, notwithstanding the new documentary evidence, I find that Judge Plimmer's findings at paragraph 28 of her determination stand.

65. The Appellant did not address, with any new evidence, her risk on return that she would be forced to marry a cousin. Applying the principles of **Devaseelan**, Judge Plimmer's findings at

paragraphs 29, 30 and 31 still stand as the Appellant has not dislodged those findings by any new evidence. For all these reasons her appeal fails and is dismissed."

The Findings of the UT

7. It is also necessary to refer to set out the relevant findings of Deputy Upper Tribunal Judge Plimmer as follows:

"18. I now turn to the appellant's claimed account. I begin by observing that the appellant's account is broadly consistent with the known background evidence. This means that her account is generally plausible. The burden is still upon her to establish that her specific account is reasonably likely to be true. The finding that the account is broadly plausible assists in this assessment but it is not determinative of it.

19. I note that in parts the appellant's written account is full and detailed. I found that this was in direct contrast to the appellant's oral evidence, which was lacking in detail.

20. I found her to be evasive when answering questions during cross-examination. By way of example, the appellant was unable to recall which month she was told the important information contained in her more recent statement to the effect that her parents home had been raided, her computer was confiscated and her father interrogated twice. She indicated that the raid took place in May 2011 but she was not told about it by her sister until months later, even though they had remained in regular contact. Upon further questioning she explained that this is because her family did not wish to upset her. When she was asked why they then told her about the raid more recently she was unable to give any credible explanation for the decision of the family. The appellant did suggest that her family did not tell her about the raid because she had not directly asked her family for an update until after her last hearing. She did not outline why she asked for an update from her family after the hearing and not before, when she remained in regular contact throughout. I do not accept that the raid took place in May 2011 or that her father has been interrogated twice. The appellant has not been able to credibly explain why her family members held back this important information until after her first hearing.

21. The appellant has also provided inconsistent oral evidence which is difficult to reconcile with what is contained in her statement. In her recent statement the appellant said that her father was very annoyed with her and wanted nothing to do with her. This is inconsistent with her oral evidence to the effect that they did not talk at length, he said don't come back and the rest was general

'chit-chat'. The appellant was unable to explain this difference. During cross-examination the appellant also maintained that her father remains 'keen' for her to marry her cousin. This is difficult to reconcile with her earlier oral evidence and the contents of her recent statement in which she says that it is clear to her that her father 'wanted nothing more to do with' her since the raid on her parents home and the interrogation of her father.

22. The appellant knew no details of the two occasions when her father was interrogated. She said that her sister could provide her with no information at all. The appellant did not have any information relating to the approximate date, the average length of detention, the nature of the questions asked. In my view this is incredible. The appellant had not provided any reasons why other family members (apart from her father who she claimed was not really speaking to her) would not be prepared to provide her with this important information.

23. I note that although the appellant claims that she was bailed in 2009 she has not provided the bail documents. There is no requirement to corroborate claims in asylum appeals. This is however an issue directly raised by the respondent in the decision letter (para 25). In response to this the appellant said in her June statement "I will ask him [father] if he has anything and have it sent if available". I asked the appellant if she had asked her father about this and she replied she had not. She implied that this is because her father did not know about her asylum claim. This is difficult to understand for two reasons. First, this explanation is inconsistent with her stated intention to ask her father about this as recently as her June statement. Second, it is also inconsistent with the appellant's allegation that her father does not wish for her to return to Iran. Mrs Holmes asked whether the appellant asked her sister to send the bail documents but she simply responded that her sister did not have them. She did not attempt to explain why she did not ask her sister to obtain the documents for her father. In my view the appellant did not ask for the bail documents because there are none. There are none because it is not reasonably likely that this appellant was detained in 2009 as claimed.

24. In oral evidence the appellant claimed that her boyfriend finished with her after she received the summons yet at her interview (Q 64) she stated that her boyfriend asked her to move out before she heard about the summons. When this inconsistency was put to the appellant she said that the summons took some time to reach the UK and her boyfriend asked her to leave before it arrived. Although I have some concerns with this evidence I am prepared to give the appellant the benefit of the doubt in light of her response to Q 68. This does not mean I accept the summons

is genuine. It means that I will not draw adverse inferences from this apparent inconsistency.

25. The appellant knew about the closure of her blog site and the delivery of a summons in February yet she delayed in making an asylum claim until 3 March 2011, after the expiry of her visa. Although the length of the delay is not significant, the timing of the events said to give rise to the claim for asylum coincide with the expiry of the appellant's extended period of leave to remain. This timing is highly suspicious. It is made worse by the further claim that there was a raid together with interrogation of her father after the last hearing and before this one.

26. Notwithstanding the findings set out above I am prepared to find on the lower standard of proof that the appellant did contribute to a blog. I base this on the documentary evidence relating to the blog – see the page example at H101 of the bundle. I am also prepared to find it may have been closed by the authorities. I do not however accept that the authorities have taken steps to go further than blocking access to the site. I do not accept that the authorities have issued the summons relied upon by the appellant. Mrs Holmes put to the appellant that it was likely that her blog was stopped for a reason not connected with her political opinion. The Appellant agreed there was nothing more to her blog than articles, poems etc from other websites.

27. I have taken into account the summons itself but this need to be considered in the round and in the context of the appellant's own evidence. This is particularly so, bearing in mind the background evidence that such documents are easily obtainable in Iran. I note that the appellant has not kept the envelope which was sent from Iran. The respondent has provided detailed reasoning for questioning the reliability of the summons (para 40). Mr Gayle reminds me that the summons has been issued from a new court in Iran and there is little evidence on the proceedings from this court. I bear this in mind but the appellant has not addressed why a document would be issued for the double purpose of a summons and a warning or why the authorities have not followed the summons up with further enquiries/documents. I accept that practices vary in Iran however I must consider the evidence in the round. Although I have been prepared to accept that the appellant's evidence to a very limited extent, I find that she has deeply embellished and exaggerated her claim.

28. I do not accept that the appellant was detained in 2009 as claimed or that the authorities have been sufficiently interested in her to issue a summons against her, raid her home and interrogate her father. Having considered all of the appellant's evidence, together with the documentary evidence she relies

upon in the context of the background evidence on Iran I do not accept the appellant gave credible evidence about what happened to her in Iran even to the lower standard of proof. I am only prepared to accept that she contributed to a blog and this was shut down by the authorities. I do not accept there has been follow up action following this. This is because I found the appellant's evidence concerning these events to be evasive, inconsistent and incredible.

29. I must also consider the appellant's claim that upon return she will be forced to marry her cousin and her family will find out that she is not a virgin. The appellant has not established that she is not a virgin, on the lower standard of proof. I do not accept that she was detained in 2009 or that she was raped in detention. In any event the appellant has provided contradictory evidence regarding her father's intentions. She alleges that her father wants nothing to do with her and will not speak to her at the same time she suggests that he will force her to marry a cousin of the family. I do not accept that this family will force the appellant to marry anyone. They were prepared to permit her to study in the UK for a substantial period and this is not indicative of a family who are very protective and strictly conservative.

30. The appellant is an educated woman who could reasonably relocate away from her family in order to avoid any feared ill-treatment. Although the background evidence describes virginity tests in Iran, they are not mandatory. When all the appellant's circumstances as I have found them to be are considered in the round it would not be unduly harsh for her to relocate should she fear family members."

The Grounds of Appeal and Oral Submissions

8. The grounds of appeal argue that the Judge erred in refusing to adjourn the hearing. Mr Williams who represented the Presenting Officer did not object to an adjournment. According to Mr Gayle's recollection the Judge rose for 45 minutes to consider the application and when she returned to court to give her decision she mistakenly stated that the Presenting Officer had objected to the adjournment whilst this was not the case.

9. The appellant had been found by Judge Plimmer to be a vague and evasive witness; however, there was a reasonable explanation for this. A very short adjournment had been requested in order to obtain a medical report. It had only recently been discovered by the solicitors that the appellant was seeing a therapist and had been doing so since 2011. The appellant was previously reluctant to reveal her dependence on therapy.

10. The treatment that the appellant had received predated her initial asylum application. The appellant had maintained that she was raped whilst in detention in Iran. This caused serious mental trauma which undermined her ability to provide clear evidence of later events.

11. The Judge noted that the appellant was at liberty to give evidence at the hearing about her treatment and matters relating to her ongoing mental health issues. However, the Judge materially erred by suggesting that an appellant's evidence would be accorded the same weight as a professionally drafted medical report.

12. The Judge also erred in relation to **Devaseelan [2002] UKAIT 00702**. At paragraph 56 of the determination the Judge stated that there was no new evidence before her and the property deed was part of the evidence before Judge Plimmer, but this was not the case. Judge Plimmer based a core adverse credibility finding on the appellant's failure to produce the property deed and it represented compelling corroborative evidence of the truthfulness of the appellant's account.

13. The Judge failed again to acknowledge documentary evidence submitted in support of the fresh claim at paragraph 58 and she merely adopted the previous findings of Judge Plimmer. At paragraph 59 the Judge based adverse credibility findings on the appellant's evidence in relation to the property. The Judge completely misunderstands the details of the property as described in the property deed. Measurements given refer to the perimeter walls rather than the overall area.

14. At paragraph 60 the Judge makes confused and contradictory findings in relation to the court documents relied on by the appellant. The Judge conflates the documents relied on by the appellant in her original claim with those submitted in support of her fresh claim. At paragraph 61 the Judge bases adverse credibility findings on alleged inconsistencies in the appellant's evidence relating to contact with her father and her sister's help in obtaining documents. However, there are no inconsistencies.

15. The appellant provided a wholly plausible and credible reason why she did not appeal her conviction in Iran consistent with the background evidence on judicial proceedings there. The Judge fails to provide sustainable reasons for rejecting the appellant's account.

16. In oral submissions Mr Gayle argued that the Judge had failed to make a finding in relation to the appellant's sister's evidence.

17. Mr Walker made oral submissions. He asserted that the appellant had raised psychological problems in her asylum interview in 2011. He argued that there was no material error of law.

18. Mr Gayle responded and in answer to my questions he stated that the appellant has seen the psychotherapist once a month since 2011 and the

psychotherapist does not charge the appellant for sessions. Mr Gayle submitted a copy of an email which was put before First-tier Tribunal Judge Amin. This is from the solicitors of 28 August 2014 requesting a letter regarding the appellant's state of mental health and any treatment she has received or is receiving. The response of the same day from Mitra Babak indicates that she is away until 5 September and not available to write a report. Ms Mitra Babak indicates in her email that she is a specialist consultant psychotherapist.

Conclusions

19. The appellant initially made a claim for asylum in 2011 and during her asylum interview she raised psychological problems as a result of how she had been treated in detention. She has had three unsuccessful asylum appeals to date. She did not adduce any evidence in relation to her mental health during the first or second appeal. I appreciate that there may be valid reasons why an appellant may be hesitant to disclose evidence relating to mental health, but the appellant in this case is an intelligent and educated person and it is difficult to accept that she would not appreciate the importance of adducing such evidence should it be capable of corroborating her claim.

20. In support of the application before the FtT Mr Gayle submitted an email exchange between the solicitors and Ms Babak. The email in my view is wholly unsatisfactory. The author of it calls herself a specialist consultant psychotherapist. Her email shows a poor understanding of the English language and there is no evidence from her confirming that the appellant is a patient and that she has been suffering from mental health problems, how long she has been seeking psychotherapy and any other information that may have assisted the appellant in seeking an adjournment.

21. I appreciate that it appears that the Presenting Officer did not object to an adjournment; however, the decision was one for the Judge to make. It was one that in my view she was entitled to reach and there was no procedural irregularity. There is nothing to suggest that the Judge was influenced by the position that she wrongly assumed the Presenting Officer had taken in relation to the application. She was aware that the Presenting Officer did not object to the adjournment when she ultimately made the decision and had ample opportunity to reconsider in the light of this. The fact that she did not do so indicates that the false assumption was not material.

22. I have considered whether unfairness has been caused to the appellant by the decision to refuse to adjourn her case. Mr Gayle informed me that there has not, as far as he is aware, been any further correspondence between the solicitors and Mitra Babak since 28 August 2014. In the light

of the history of this case and the assertions made by Mr Gayle in relation to the appellant I was surprised by this. The grounds of appeal do not disclose that there has been any unfairness caused to the appellant as a result of the Judge refusing to grant an adjournment. It would not be reasonable to expect the appellant to submit a full and detailed expert report for the purpose of an error of law hearing (in the light of the directions issued by the UT); however, there is nothing in the email from Mitra Babak and nothing before me that would indicate that the failure to adjourn has led to unfairness in this case. The Judge was entitled to conclude that the appellant could give evidence about her own mental health. I note that the appellant did not do so. She had not made reference to it in her statement or in oral evidence. She could have given evidence about her sessions with Ms Babak and her reluctance to tell her solicitors about this, but she did not do so.

23. At the start of the hearing before me I clarified the position in relation to the documents that the appellant relied on in relation to the fresh claim and those that were before Deputy Upper Tribunal Judge Plimmer. There was a court summons or warning that was issued on 23 February 2011. This document was before Judge Plimmer. In support of her fresh claim the appellant submitted a court verdict issued on 25 December 2011, a warning notice issued on 3 December 2011 summoning her to attend court on 25 December 2012 and a property ownership deed in relation to her father's home. These were not before Judge Plimmer.

24. The Judge correctly noted that the starting point in the appeal was the decision of Judge Plimmer. At paragraph 56 she stated that the property deed was part of the evidence before Judge Plimmer, but this is not the case. However, paragraph 56 must be considered with paragraph 59 where it is clear that the Judge realised that this piece evidence was not before the Judge Plimmer and she went on to consider it and found that the appellant's evidence (about the property) was lacking in detail and that she had not provided a reasonable explanation for the delay in producing the document. In my view, the Judge understood that this document was not before Judge Plimmer. The property deed was in existence before the date of the hearing before Judge Plimmer. In my view at paragraph 56 the Judge in concluding that there was no new evidence before her is referring to the appellant's direct evidence, because when reading the decision it is obvious that she understood that the appellant relied on additional documentary evidence which was not before Judge Plimmer.

25. The Judge went on to consider the warning notice issued against the appellant on 3 December 2011 requesting that she attends court on 25 December 2011; however, she found the appellant's evidence about it inconsistent. The appellant's evidence was that she had obtained this document from her sister; however, Judge Amin found this to be inconsistent with the evidence that the appellant gave before Judge Plimmer that she was going to ask her father if he had anything and that

she would have it sent if available. This is an inconsistency which the Judge was entitled to consider and what weight to attach to it was a matter for her. The documents to which the Judge refers at paragraph 60 are the two additional documents which the appellant submitted with her fresh claim (the above mentioned warning notice and the court conviction). It is clear that she appreciated that these documents were not in existence at the time of the previous hearings. However, the Judge did not accept the appellant's evidence about how they came to be in her possession and as a result places little weight on them.

26. The Judge considered the reliability of the new evidence and made independent findings about this in the context of the evidence as a whole. The Judge did what was required of her in accordance with the guidance in **Devalseelan**.

27. Mr Gayle raised the issue of the appellant's sister's witness statement. This was not raised in the grounds of appeal. The statement did not form part of the appellant's bundle before the FtT. It was faxed to the Tribunal on 29 August 2014. The Judge does not refer to it. The evidence is broadly speaking corroborative with that of the appellant. However, there is no reason for me to believe that that this evidence was not taken into account by the Judge of the First-tier Tribunal. It is not incumbent on the Judge to make findings on each and every piece of evidence relied upon by the appellant. Like the property deed there was no cogent or persuasive evidence from the appellant explaining why this evidence was not produced until 29 August 2014. Had it not been taken into account I am not persuaded that this would amount to a material error.

28. There is no material error of law. The decision of the Judge to dismiss the appellant's asylum claim is maintained.

Signed Joanna McWilliam Date 2 December 2014

Deputy Upper Tribunal Judge McWilliam