Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03411/2014

THE IMMIGRATION ACTS

Heard at Newport	**Decision & Reasons Promulgated**
On 27 January 2015	**On 6 February 2015**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

M A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr B Hoshi instructed by Migrant Legal Project
For the Respondent: Mr I Richards, Home Office Presenting Officer

REMITTAL AND REASONS

1. This appeal is subject to an anonymity order 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).

Introduction

2. The appellant is a citizen of Iran who was born on 24 September 1978. The appellant arrived in the United Kingdom sometime in late April or early May 2010. On 2 May 2010, he claimed asylum. The Secretary of State

refused that claim on 9 September 2010. On 23 September 2010, the appellant appealed and his appeal was dismissed on 10 December 2010. On 11 January 2011, permission was granted to appeal that decision to the Upper Tribunal. On 13 August 2012, the Home Office withdrew the Secretary of State's decision of 9 September 2010 before the appeal was heard.

3. On 6 May 2014, the Secretary of State made a fresh decision rejecting the appellant's claim for asylum, for humanitarian protection and under the European Convention on Human Rights. On 9 May 2014, the Secretary of State made a decision to refuse the appellant leave to enter and proposed to give directions for his removal to Iran.

4. The appellant appealed that latter decision to the First-tier Tribunal. Following a hearing on 16 September 2014, the First-tier Tribunal (Judge Knowles) in a determination promulgated on 26 September 2014, dismissed the appellant's appeal.

5. On 20 October 2014, the First-tier Tribunal (Judge Cruthers) granted the appellant permission to appeal to the Upper Tribunal on the basis that the judge had arguably erred in law in reaching an adverse credibility finding.

6. Thus, the appeal came before me.

The Appellant's Claim

7. Before the judge, the appellant's claim was twofold. First, he claimed to be at risk on return to Iran because of his political opinion. He claimed that he was a former member of the Basij who had been arrested at an anti-government demonstration on 26/27 December 2009 and had been detained, interrogated and ill-treated before being released on bail. Secondly, the appellant claimed that he was at risk on return because of his religion. He claimed that he had converted to Christianity since his arrival in the UK.

The Judge's Decision

8. As regards the appellant's first claim, the judge made an adverse credibility finding. He did not accept that the appellant had ever been a member of the Basij or that he had been arrested, detained, interrogated or ill-treated in December 2009 following his participation in an anti-government demonstration.

9. As regards the appellant's second claim, the judge did not accept that the appellant was a *bona fide* Christian convert and that, as a result, he would be at risk on return to Iran.

10. Finally, the judge did not accept that the appellant would be at risk as a failed asylum seeker, even if he had exited Iran illegally, applying the country guidance case of SB Iran CG [2009] UKAIT 00053.

11. The appellant did not pursue any claim under Art 8 of the ECHR before the judge.

The Grounds

12. Mr Hoshi, in his oral submissions developed the six grounds of appeal challenging the judge's adverse credibility finding. Those grounds are, in summary, as follows:

(1) The judge misunderstood and committed a procedural irregularity in assessing the translations of the appellant's Basij card (para 59 of the determination);

(2) The judge failed to take into account the background evidence concerning changes in the Basij's role in 2009 in finding that it was inherently unlikely that the appellant (as he claimed) thought until 2009 that the Basij was a benign organisation (paras 57 and 58 of the determination);

(3) It was irrational or procedurally irregular for the judge to accept the expert evidence of Dr Kakhki when making an adverse finding about the appellant's Basij card (at para 59) whilst rejecting the expert's evidence at para 60 of the determination.

(4) Having found that the appellant was not a member of the Basij, it was irrational for the judge to then conclude that, as a member of the Basij, he would not have been released as he described (at para 61 of the determination);

(5) The judge failed to take into account the medical evidence that the appellant suffered from PTSD which was highly consistent with sexual assault in reaching his adverse credibility but rather treated it as add-on contrary to the principle in SA (Somalia) v SSHD [2006] EWCA Civ 1302. Further, given the medial evidence the judge erred in law by failing to take into account the background evidence (set out at para 24 of the grounds) which demonstrated that the use of sexual assault was a prevalent means of torturing detainees in Iran, in particular political detainees in the period immediately following the 2009 presidential elections;

(6) It was irrational for the judge to find that it was unlikely that the appellant would, since being in the UK, risk blogging when that would expose him to danger as a political opponent of the Iranian government. There were mistakes made in assessing the evidence of the appellant's blogging and blocking of his web-site.

13. As part of his submissions, Mr Hoshi submitted that the grounds, seen as a whole, demonstrated the judge's failure to look at the evidence in the round.

14. In the Rule 24 response, the respondent submitted that the grounds of appeal amounted to nothing more than a "disagreement" with the judge's finding which he was entitled to reach on the basis of the evidence before him.

15. That position was expanded upon by Mr Richards in his oral submissions which I will deal with shortly.

Discussion

Ground 1

16. The appellant claimed that he had joined the Basij in late 2006. He produced what he claimed to be his Basij identity card. An initial translation of that card stated that the front of the card had upon it the words "valid until April/May 2004" – apparently inconsistently with when he claimed to have joined. That translation is found at pages A71 and A73 of the appellant's bundle. The appellant did not accept that was an accurate translation of his card and his representative requested that the original be returned by the respondent to whom it had been sent in order that it could be authenticated. However, the card was not returned prior to the day of the initial listing of the appellant's appeal in the First-tier Tribunal on 16 July 2014. As a consequence, the judge adjourned that hearing and directed the respondent to produce the card in order to allow the appellant to obtain a further translation. Again, the card was not returned. At the hearing on 16 September 2014, the Presenting Officer was unable to produce the card and, it appears, it has been misplaced or lost by the respondent.

17. However, prior to that hearing the appellant obtained a further translation of his card using a photocopy of the original. That translation in a short supplementary appellant's bundle. That translation does not contain the word "valid until: April/May 2004" as being on the front of the card. Instead, the translation states that the back of the card had upon it "The validity of this card is as follows: Mehr mah 88 (August/September 2009)". Something similar appears in the first translation at page A71 as being on the back of the card.

18. The point before the judge is an obvious one. The first translation of the card appears to be inconsistent with the appellant's claim to have only joined the Basij in 2006. The second translation does not contain that apparent inconsistency and, indeed, refers to the validity of the card covering a period when the appellant claimed to be in the Basij.

19. In addition, the appellant submitted an expert report by Dr Kakhki dated 7 June 2014 (at pages A86 – A90 of the appellant's bundle). Dr Kakhki said this about the card (at page A87):

> "With reference to the smaller document, this is a Basij membership card, containing the file serial number 760388 and issued in the name of Mr. Mehdi Abdi, son of Asghar, born in 1356 (1977). The card specifies that the holder was a Basij member during the period of the card's validity. The reverse of the card contains one validity label up to October 2009 (Mehr 1388) confirming the card's expiry date. It is common for these types of cards to be renewed annually, with space allowed for renewal labels to extend the duration of the card. The date of issue has not been specified, but it is apparent that the card has been valid for at least a year before the expiration of the issuing duration period in October 2009 as the words on the label specifically translate as 'valid up to October 2009'. The card contains a stamp overlaying the photograph and a signature at the bottom left, endorsed by the issuing official. The text on the card specifies the address for its return and states that misuse will result in prosecution. The card also contains details of the holder's place of service and membership number, but these are set out in coded form.

> I can confirm that all the necessary legal and official requirements for a genuine Basij membership card are present in this document. The format, layout, and size of the card are all in accordance with the standard to be expected from a document issued by the Basij. With regard to the contents, a thorough examination of the text does not indicate any evidence of rubbing out or alteration at any point, which would be manifestly in the overlay of writing/pen or stain from chemical alteration etc. The document contains the appropriate stamp from the Basij in the appropriate location. The stamp overlaying the photograph corresponds to the delineations present on the card itself; the outline and margins of the stamp on the photograph match perfectly the contours on the nearby area of the document, indicating that the photograph has not been replaced. The stamp is both unique and presented in ink from the issuing authority, namely the Shariar Branch, as should be the case. The card also contains a Revolutionary Guard Corp logo at the top right. This is fully in line with the format requirements, as the Basij is legally considered to be a subsidiary part of the Revolutionary Guard and share some of their attributes.
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> Although these types of cards are normally laminated, the absence of lamination is not in itself indicative or determinative of the card's authenticity. This is especially in view of the disparate resources which vary between base to base as well as the need to place renewal labels on the back of the card itself, which necessitates the removal of such lamination.
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> The contents, in particular the phraseology used when, for instance, explaining consequences of misuse, are also consistent with this type of card. All the necessary details regarding the holder are set out fully. The fact that the membership number and place of service are set out in coded form is an important feature of a genuine Basij card, as the purpose of the code is to maintain secrecy should the card fall into the wrong hands. Phraseology used, for instance when referring to the '20 Million Army' as an alternative name for the Basij, is also of a correctly high standard.
>
> The procedure for renewal of the card has been consistently followed as evidence by the label on the back, which indicates a period of at least a year's validity before October 2009. This particular date of renewal is also consistent with the normal time frame in which these cards are renewed every year. Furthermore, while no details of the date of issue are explicated, this is not a requirement for this type of card, whereas the expiration date (which is required) is correctly stated. The appropriate signature of the issuing officer has also been included, which is observable despite its low visibility. It is also apparent that all of the handwritten information on the document appears faint due to its frequent usage but are uniform in appearance."

20. Dr Kakhki's report supports the appellant's claim that the document is an authentic Basij card. In particular, it is worth noting, consistently with the second translation, that Dr Kakhki notes that the document says "valid up to October 2009". There is no reference to the card stating on its front "valid until: April/May 2004". Further, in the final paragraph set out above, Dr Kakhki notes that the stated date of validity (on the back of the card) is consistent with the normal practice that such cards are renewed annually. He also notes that the card contains "no details of the date of issue" but that this is not a requirement for this type of card whereas the expiration

date is required. In his determination, the judge dealt with the appellant's card at para 59 of his determination in the following terms:

> "The respondent takes the view that the credibility of the appellant's claim to have been a Basiji is damaged by the fact that the expiry date shown on the front of the appellant's Basij identity card is April/May 2004, while the appellant claims to have joined in late 2006. It is the appellant's case that the translation is inaccurate in that this statement simply does not appear on the front of the card. In support of this he produces an alternative translation of a copy of the card (the Home Office having mislaid the original), together with a report from Dr Kakhki. The appellant's name does not appear on the new translation because it is said to be illegible on the copy. While it is unfortunate that the Home Office cannot trace the original document, it was not contended on behalf of the respondent that the copy retained by the appellant was not a copy of the misplaced original. I am satisfied that it is, given that both translations bear the same station code on the front and the same serial number on the back. It is far from clear, however, why the expiry date April/May 2004 should appear in the original translation of the card if it was not there. The explanation would appear to be either that the translator has made an elementary error or had made the date up – both of which I find highly unlikely. It is clear from both translations that many of the entries on the card are illegible. I cannot discount the possibility that, just as the second translator found the appellant's name illegible on the copy of the card provided by his representatives, so too, he may have been unable to make out the words 'valid until April/May 2004'. In so concluding I bear in mind that the second translator has included a note in his translation to the effect that the copy of the document he was translating was not clear and/or covered by a non-readable stamp. The second translation does not satisfy me that the first translation was inaccurate. In reaching this conclusion I bear in mind the possibility that the card was prepared with its original expiry date on the front and with provision for renewal dates to be printed or written on the back. To my mind, this is supported by the report of Dr Kakhki, who states that it is common for Basij cards to be renewed annually with space allocated for renewal labels. In my view, the evidence suggests that a label renewing the appellant's card to October 2009 has been affixed to the back. Based on Dr Kakhki's report, if the appellant joined the Basij in late 2006 as he claims, I would expect his card to have been renewed in 2007 and 2008 for it to have expired in October 2009. The card, however, contains no such endorsement."

21. Mr Hoshi submitted that it was, in principle, wrong for the judge to prefer the first translation given that the respondent had been unable to return the original document so that a second translation could be based upon that document rather than a photocopy. Further, Mr Hoshi submitted that Dr Kakhki's report was entirely consistent with the appellant's claim that this document was an authentic one valid during a period when he claimed to be in the Basij. Further, the judge was wrong to infer from Dr Kakhki's report where he stated that annual renewal was normal, that the absence of renewal stamps on the rear of the card for 2007 and 2008 counted against the appellant's claim that he had joined in late 2006.

22. On behalf of the respondent, Mr Richards acknowledged that it was regrettable that the original card was unavailable. However, he submitted

it had been available at an early stage and a translation had been obtained by the appellant. The judge was correct not to "close his eyes" to both the first and second translations. Mr Richards submitted that he had given entirely rational reasons for preferring the original translation to the second one.

23. Mr Richards is correct that the judge was required to consider the evidence that was relied on before him including both translations. However, I see considerable merit in Mr Hoshi's submission that the judge should not have inferred that the second translation was less persuasive given the difficulties faced by the appellant in obtaining a translation using the original document which had been misplaced or lost by the respondent.

24. Further, the judge does not, in my view, properly grapple with the second translation and the fact that it does not state that the card was "valid until: April/May 2004". Where the second translator considers that some passage was "illegible", he has expressly stated so. There is no suggestion that there is an "illegible" part of the card following the line setting out the "station code" and "Basij" immediately above the boxes on the front of the card. In addition, Dr Kakhki clearly did not in examining the document see any "date of issue" or "validity" date on the front of the card. All he saw was the renewal date on the rear.

25. Also, I accept Mr Hoshi's submission that the judge appears to interpret Dr Kakhki's report as stating that the Basij card have a validity date on the front whilst the renewal dates are on the back of the card. Dr Kakhki does not say that, only noting that the "date of issue" is not a requirement of this type of card whilst an expiration date, which he identifies as being present, namely October 2009 is included on the card.

26. Given the disadvantage faced by the appellant and in the light of the fact that the second translation and Dr Kakhki's report were, at least prima facie, inconsistent with the first translation that the card contained an endorsement of validity on its front dated 2004, in my judgment, the judge failed to give adequate reasons for preferring the first translation which was, inconsistent, with the appellant's claim not to have joined the Basij until late 2006.

27. The judge's reasons in para 59 of his determination was a significant underpinning for his adverse credibility finding. It was a central part of the appellant's case that he had an authentic Basij card which supported his claim to have been a member of the Basij who was detained and ill-treated in 2009. In itself, the removal of this pillar to support the judge's adverse credibility finding was material to that decision. In any event, taken with my view of grounds 2 and 6 to which I now turn, cumulatively there is no doubt that the judge's adverse credibility finding cannot stand.

Ground 2

28. In para 57 of his determination, the judge set out, based upon some of the background evidence the nature of the Basij in Iran as follows:-

> "57. The Basij is an organisation described in the US State Department Human Rights Report for 2013 as a voluntary paramilitary group with local organisations in cities and towns across Iran which sometimes acts as an auxiliary law enforcement unit. It is said that Basij units often engage in crackdowns on political opposition elements without formal guidance or supervision. The report goes on to say that regular and paramilitary security forces, including the Basij, are frequently accused of numerous human rights abuses, including acts of violence against protestors and public demonstrations. The country background information indicates that, since the June 2009 election, the position as regards human rights and religious freedom in Iran has deteriorated markedly. I note, however, from the testimony of Dr Katrina Lantos Swett (contained in the appellant's bundle) that, since the start of the Islamic Revolution in 1979, any Iranian who dissented from the government's own interpretation of Shia Islam was liable to be considered an enemy of the state and a potential target of abuse by the authorities. Dr Swett gives the example of Ayatollah Mohammad Kazemeni Boroujerdi, who favoured the separation of religion and state and who was arrested and imprisoned without charge in October 2006. She indicates that the ascension of Mahmoud Ahmadinejad to the Presidency in the summer of 2005 put an end to hopes for reform. In my view, the emergence of significant opposition movement to contest the June 2009 election strongly suggests wide dissatisfaction with the governance of Iran. The uprising that was triggered by the alleged .....ing of that election is also, to my mind, evidence of that. It is clear from ***SB Iran CG (2009) UKAIT 00053*** that the pre-June 2009 position as regards suppression of dissent was far from satisfactory."

29. Then, in para 58 the judge doubted that the appellant could have joined the Basij in 2006 (as he claimed) in order to serve the people in the community because the Basij was a benign organisation. The judge said this:

> "58. It is against that background that the appellant claims to have joined the Basij in 2006 in order, he says, to serve the people and the community. I find it unlikely that, by 2006, it had not dawned on the appellant that the Basij was not the benign organisation he claims to have believed it was at the time he joined. It is said that the appellant is a critical thinker. He maintains that he developed an interest in Christianity while in Iran, borrowing a book on the subject and later purchasing a Bible. If that is true, I do not find it credible that such a person would have joined the Basiji."

30. Mr Hoshi referred me to a number of documents at paras 10 – 13 of the grounds which, he submitted, demonstrated that the Basij had changed in 2009. In particular he relied on a document by Dr Saeid Golkar entitled "The Ideological – Political Training of Iran's Basij" in a Middle East Brief published by the Brandies University in the USA in September 2010 (pages CA226 – CA235). There, (at page CA227), Dr Golkar states:-

> "In 2009, the Basij changed its name back to the Organisation for the Mobilization of the Oppressed, and General Mohammad Reza Naqdi became its commander. With this last name change, came a change in mission: No longer one-fifth of the IRGC military forces, the Basij was now a special

> organisation with the specific objective of confronting political and cultural threats against the regime."

31. Mr Hoshi submitted this demonstrated that, contrary to the judge's finding that the appellant would have been aware that the Basij was not a benign organisation in 2006, in fact there had been a sea-change in its methods and mission around 2009 which was the very time at which the appellant says that he realised the Basij was not a benign organisation.

32. In addition, Mr Hoshi pointed out Dr Golkar noted that some members of the Basij had refused to take part in the violent suppression of the opposition during the 2009 presidential election which was consistent with the appellant's account that he had considered the Basij to be a benign organisation previously. At page CA232 of the appellant's bundle, Dr Golkar in his article states:

> "In addition, by some accounts there were active and even special Basijis who refused to take part in the violent suppression of the opposition after the disputed presidential election of 2009, making it even clearer that the IPT programs had not been entirely effective in carrying out their stated goals."

33. In my judgment, in finding that was "unlikely that, by 2006, it had not dawned on the appellant that the Basij was not the benign organisation he claims to have believed it was at the time he joined", the judge did not taken into account the background evidence to which I have referred and which would be consistent with the appellant's account that he had a change of heart around 2009 as regards his membership of the Basij because it no longer functioned on the basis he had joined it, namely to serve the people in the community.

34. This error further undermines the sustainability of the judge's adverse credibility finding.

Ground 6

35. Mr Hoshi submitted that the judge had irrationally concluded that the appellant would not, in the light of a post-election crackdown on dissent, produce anti-government blogs. Mr Hoshi submitted that the simple fact was that individuals did do this despite the risk to them. He drew my attention to the fact (which was acknowledged by Mr Richards) that there was a pending country guidance case in the Upper Tribunal on the very issue of the risk to bloggers.

36. Further, he submitted that the judge had, in any event, made a factual error in para 64 when he had stated:

> "I can find nothing in the documents to indicate that the blocking notice relates to the same web log as the screen prints."

37. Mr Hoshi took me to the documents (at pages A51 – A55) which, he submitted, showed that the appellant's web address was the address on the blocking notice.

38. Mr Richards submitted that the judge was entitled to take the view that the appellant would not, if he was who he claimed, take the risk of

blogging. In any event, Mr Richards submitted that this was an unfair criticism of the judge's finding which was not based simply upon that issue. He had, Mr Richard's submitted given a number of reasons in para 64 not to accept the appellant's account that he been a blogging anti-government messages. Mr Richards submitted that the appellant claimed to be a former member of the Basij who published a critical blog including his full name and photograph.

39. In response to that, Mr Hoshi pointed out that although the judge stated that the appellant's photograph was included on the blog, that was in fact not correct. Mr Richards did not seek to argue to the contrary.

40. Paragraph 64 of the judge's determination deals with the issue of the blog as follows:

> "In my view, it follows from these findings that the Iranian authorities had no reason to raid the appellant's family home or to seize his computer. He produces screen prints of his weblog which, I acknowledge, contain observations which the Iranian authorities are likely to regard as anti-regime. There is also a screen print of a message that the appellant's blog was blocked for 1 or more of 3 reasons, although there is no documentary proof of when this blocking took place. The appellant claims to have started his blog in 1387 (end 2008/early 2009) when, he says, it was fashionable to do such a thing and when the use of the internet was relatively uncontrolled by the Iranian authorities. I note that most of the content shown in the copy screen prints that the appellant has produced post-date the June 2009 election. Given the rigour with which the authorities are reported to have cracked down on the post-election dissent, it strikes me that the appellant would have been taking a huge risk in publishing on the internet anti-regime material accompanied by his full name and photograph, especially given his claim to have been a Basiji at the time. In my judgment, the appellant paints an unlikely picture in this respect. Moreover, there are, in my view, a number of unsatisfactory features about the extracts the appellant has produced. The documents are, as the respondent points out, copies and not the original screen prints. They are only partially translated. I can find nothing in the documents to indicate that the blocking notice relates to the same weblog as the screen prints. Even if it does, I acknowledge the force in the respondent's point that the reason for the blocking action is not clear. Despite the appellant's claim to have run the blog until he left Iran, there is no evidence that the authorities took any adverse interest in him as a result of his internet postings, even during the 10 month period from the June 2009 crackdown until his exit from Iran at the end of April 2010 and despite his claim that he could be identified by his name and photograph. I find that the appellant has not proved that it is reasonably likely that he ran a weblog containing anti-regime material in Iran or, if he did, that there is any reasonable likelihood that the Iranian authorities have taken an adverse interest in him as a result."

41. I agree with Mr Richards that the judge does in fact give a number of reasons for not accepting the appellant's account of his blogging activity. He does, however, mistakenly believe that the appellant's photograph was included on the blog and wrongly fails to notice that the blocking notice is related to the appellant's website address for his blog. Mr Richards pointed out that the blocking notice (at page A53 of the appellant's

bundle) merely states that the blog was blocked for one of three reasons: "ordered by law enforcement authorities for blocking this blog"; "violation of rules to use the site"; "published immoral content that is against the law". Only the first would, Mr Richards submitted, support the appellant's claim. Mr Hoshi responded that given the blogs it was a reasonable inference that only the first of these reasons applied.

42. It is, of course, apparent that the judge never dealt with this last issue in para 64 of his determination. He made a number of factual mistake which cast doubt on the sustainability of his reasoning in that paragraph. Although it is a high threshold to reach, I accept Mr Hoshi's submission that, without more, it is irrational for the judge to have concluded that the appellant would not have run the "huge risk" in exposing himself to the authorities by blogging. The context, which was common ground between the parties, is that bloggers do expose themselves to risks in this way.

43. Whilst the judge did give additional reasons for not accepting this aspect of the appellant's claim in para 64, I am unable to conclude that these errors were not material to his adverse conclusion reached at the end of para 64. That further undermines the overall adverse credibility finding reached by the judge.

44. Grounds 1, 2 and 6 are in themselves are sufficient given their nature and effect to substantially undermine the judge's adverse credibility finding and were, in my judgment, material errors such that the judge's adverse credibility finding cannot stand.

Other Grounds

45. In the light of that, it is not strictly necessary to consider grounds 3, 4 and 5. Had it been necessary, I would have rejected Mr Hoshi's submissions that those grounds were made out. First (ground 3), there was nothing inherently wrong in the judge accepting some parts of Dr Kakhki's report while not accepting other parts of it providing adequate reasons were given and they were. Secondly (ground 4), the judge was perfectly entitled to assess the appellant's account of his detention and ill-treatment on the basis of his account that he was a member of the Basij despite the fact that the judge did not accept that he was. The internal coherence or integrity of the appellant's evidence could, indeed should, be assessed on its own terms. Thirdly (ground 5), the judge did consider the expert medical evidence at para 62 but that was prior to him reaching his adverse credibility finding at para 63 of his determination. In my view, a fair reading of the judge's determination cannot lead to the conclusion that he failed to consider the medical evidence in assessing the appellant's credibility and merely dealt with it as an add-on. There is, however, some merit in Mr Hoshi's submission that, having accepted that the appellant was sexually assaulted, the judge failed to take into account that the background evidence was consistent with this being a means of torture employed in Iran particularly against political detainees. I accept that that, on the face of it, amounted to an error of law by the judge. Had it stood alone, it would not have been in itself material. However, it does

add to the errors I have identified, in particular under grounds 1, 2, and 6 above.

46. For these reasons, the judge's adverse credibility finding and his rejection of the appellant's evidence relating to his membership of the Basij and subsequent detention and ill-treatment cannot stand.

The Conversion Issue

47. Mr Hoshi accepted that the appellant had not directly challenged the judge's findings and conclusion in paras 66–67 that the appellant was not at risk on return as a Christian convert. He sought to argue that, if the judge's adverse credibility finding in relation to the appellant's political claim could not stand, then his findings in relation to the appellant's fear based upon his conversion also could not stand.

48. I do not accept that submission. At paras 66 and 67, the judge gave freestanding reasons for not accepting that the appellant had established that he was a Christian convert in the UK. The judge's reasons are wholly independent of his adverse credibility finding on the appellant's political claim. Consequently, the errors of law I have identified above were immaterial to his adverse finding in relation to the appellant's claim based upon his religious conversion. The judge's findings at paras 66 and 67 shall, as a consequence, stand.

Decision and Disposal

49. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.

50. Having regard to para 7.2 of the *Senior President's Practice Statements*, and given the nature and extent of the factual findings required in remaking the decision, this is an appropriate case to remit to the First-tier Tribunal.

51. On remittal, in remaking the decision the judge's findings in paras 66 and 67 shall stand. Likewise, no challenge was made to the judge's finding in para 68 that the appellant would not be at risk as a returning asylum seeker. That finding shall also stand. The sole issue for the First-tier Tribunal will be to remake the decision based on the appellant's account to be at risk based upon his membership of the Basij. None of the judge's findings in paras 57 – 64 shall stand.

52. Accordingly, to that extent the appeal is remitted to the First-tier Tribunal (to be heard by a judge other than Judge Knowles) to remake the decision.

Signed

A Grubb
Judge of the Upper Tribunal