



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)**

APPEAL NUMBER: AA/03621/2015

THE IMMIGRATION ACTS

**Heard at: Field House
On 20 October 2015**

**Decision and Reasons Promulgated
On 6 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

**MR ALI SHAHBAZI
NO ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr. K Gayle, Elder Rahimi Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Iran, born on 12 April 1998. He appeals with permission against the decision of First-tier Tribunal Judge Broe, promulgated on 18 June 2015, dismissing his asylum, humanitarian protection and human rights appeals.
2. In granting permission to appeal, Upper Tribunal Judge McGeachy stated that while it may be that the grounds of appeal are really no more than a disagreement with findings of fact which the Judge was entitled to make on the evidence before her, given that it is accepted that the appellant's father had been detained and also that he is so much older than his siblings and so could have been singled out for

expulsion from school, and further taking into account the terms of his mother's email, the grounds are arguable.

The background

3. The appellant is a national of Iran who arrived in the UK on 14 November 2013 when he was 15 years old, claiming asylum on arrival. He attended a screening interview that day, followed by a full asylum interview on 30 January 2015.
4. In the statement accompanying his claim the appellant asserted that he is a national of Iran, born on 12 April 1998. He lived with his parents, his brother and his sister until the family home was raided by the E'talla'at in April or May 2013. They took his father away and the family claims not to have seen him since. He claimed that his father was detained in Evin Prison. After that the house was raided every few days and their neighbours were questioned about any suspicious activity. He was expelled from school in June 2013 and was told that he could not sit his exams because his father was an anti-regime activist [10].
5. His passport was seized during one of the raids. They said he was too young to be detained with his father but made it clear that he would be detained when he turned 18. He argued with them during one of the raids. They wanted to take him away but his mother persuaded them not to do so. He said it was only a matter of time before they lost patience and took him away. His mother then spoke to his brother, Davoud, who found an agent to take him to a safe place. The appellant left Iran on 25 October 2013 [11].
6. Whilst in the UK he has been in contact with his mother who provided a letter stating that his father was still in prison. No reason had been given for the detention. His mother is certain that it would be unsafe for the appellant to return. He is not aware of his father's alleged activities. He claimed that he is of "ongoing interest" to the authorities. He would be suspected of being anti-regime and the situation has not improved with the election of the new President [12].

The respondent's case

7. Whilst the respondent accepted that his father had been arrested in March or April 2013 in connection with an allegation of anti-regime activities, she did not accept that the E'talla'at would continue to raid the house when they found nothing implicating his father. Moreover, the appellant had not been involved in any anti-regime activity and had no knowledge of what was alleged against his father. Accordingly, the respondent did not accept that the authorities would have any interest in him.
8. The respondent stated in reliance on the background information that the appellant, even if under the age of 18, would be above the age of criminal responsibility. It was therefore not credible that the authorities would wait until he attained that age before taking action against him. He could have been prosecuted through the children's court.
9. Nor did the respondent find it credible that the appellant would have been singled out from his siblings because they were all children of an anti-regime activist. He also failed to show why the authorities would have any interest in him but not his mother.

Accordingly, it was not accepted that the authorities would have an interest in the appellant on his return to Iran. It was in his best interests that he return to rejoin his family.

10. Although the Judge stated at paragraph 1 of the decision that the appellant's claim was certified under s.94(2) of the 2002 Act as being clearly unfounded, the basis for that statement is not clear. The Home Office Presenting Officer did not make any submissions in that respect. The appellant's appeal proceeded without further reference to the alleged certification and no submissions in that respect were made by either representative before the Upper Tribunal.

Submissions

11. Mr Gayle relied on the grounds of appeal accompanying the application for permission. He noted that the Judge accepted that the appellant's father had been arrested and detained in Iran. That was the basis of his claim that he would be at risk himself.
12. The Judge acknowledged that the background information confirmed the arbitrary nature of detentions in Iran. That would also extend to raids. Mr Gayle submitted that the appellant provided a plausible account. The Judge erred in failing to provide "sufficient reasoning" for rejecting his evidence regarding the repeated raids on his house and why the authorities did not arrest and detain him.
13. He referred to the Judge's findings regarding the appellant's claim to have been expelled from school because of his father. She did not find it likely that he would be distinguished from his siblings in this way. Mr Gayle submitted that the Judge ignored the appellant's explanation for the distinction, namely, that his sister was only nine years old and his brother six at the time and not yet in school.
14. Further, he submitted that the Judge misrepresented the contents of the appellant's mother's email. She merely quoted from a section of the email where his mother stated that he would not be able to return to school or get a job in the civil service. The Judge then stated that "... her concerns are clear and I am not persuaded that his fear of treatment amounting to persecution is genuine." She was further not persuaded that the risks the mother described, if genuine, amounted to persecution [24].
15. However, Mr Gayle noted that the email went on to state that
"..... every day I thank god that you left and that you managed to get away from everything and everyone. Here everything is all over the place. The situation has become worse than when you were here. We are under severe pressure. Lives have become merely giving answers to questions from this person and that person. There has still not been any news about your father..... be careful so that, god forbid, you do not come back otherwise the rest of your life will be destroyed here. Remember the days when everyone was harassing you? If you return you won't be permitted to go back to school; you won't be able to take a job in the civil service; you won't be able to do anything here. So please don't even think about returning."
16. He referred to [24] of the decision where the Judge stated that the appellant's mother made no mention of the risk of imprisonment which had been claimed by the

appellant since his screening interview. He submitted in that respect, that his mother's statement was not professionally drafted. It is 'implicit' that anyone reading the email would be aware of the background to the appellant's claim, including his risk from the Iranian authorities. Moreover, the Judge failed to provide any alternative reasons for the reference to school expulsion or banning from the civil service job if the appellant were returned to Iran.

17. Mr Gayle referred to [25] where the Judge considered whether the situation had changed since the appellant has been in the UK. There was no dispute that the respondent contacted his mother on the date of the interview. The appellant claimed that the call was monitored and that his mother had been questioned, although not detained. The summary of the call revealed that his mother confirmed their relationship and that he was living with her before he left Iran. Ms Isherwood intervened to contend that the Judge noted at [25] that there was nothing from his mother to confirm that she was subsequently questioned.
18. Mr Gayle referred to the appellant's claim that this call increased the risks he faced if returned, as the call was monitored by the Iranian authorities. He submitted that the Judge's analysis and finding at [26] that the telephone call would not have placed the appellant at increased risk of return as they were already aware that the appellant was in the UK, is flawed.
19. At [26] the Judge referred to the appellant's claim that his mother's emails would not be monitored as she used Internet cafés and not their home connection. She considered the 'objective evidence' on this issue and noted that in the USSD Report for 2013 there is a reference to a UN report which stated that the Minister of Information and Communication Technology Regulations prohibits households and cybercafés from having high speed internet access, and in January 2012, the government required cybercafés to install security cameras and collect users' personal information. According to domestic press reports, the police inspected 352 internet cafés during one week in July and closed 67 for offering "illegal services" to youth.
20. The Judge accordingly found that the report contradicted the appellant's account of communications with his mother. If the authorities were interested in his whereabouts, they would already know that he was in the UK. She accordingly did not accept that the telephone call would place him at risk as he claimed [26].
21. Mr Gayle submitted that the report did not state that it is 'inevitable' that all emails would be intercepted by Iranian authorities and that the analysis is accordingly flawed.
22. He further submitted that it is evident from [27] to [29] that the Judge accepted that the appellant's father had been detained for anti-regime activities and that the family home had been raided, and that he may have been expelled from school¹. The Judge found that his presence in the UK has not worsened his situation in Iran and that he would be returned there as a failed asylum seeker who left illegally [27].

¹ In fact the Judge stated that the family home was visited by security forces who had the opportunity to detain the appellant but chose not to do so [27].

23. It was against that background that the Judge stated at [28] that she gave careful consideration to any risk that he may face on return to Iran. She had regard to SB (Risk on return – Illegal Exit) Iran CG [2009] UKAIT 00053, where she summarised the Tribunal's findings that Iranians facing forced 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 Iran illegally 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 difficulties he is likely to face.
24. In the circumstances, the Judge concluded that the appellant would not face a real risk of persecution [29].
25. Mr Gayle submitted that in line with the reasoning in SB, *supra*, it is inevitable that the appellant would be interrogated. His father's profile would be known by the interrogators. That would increase suspicion of the appellant, which would be exacerbated by his having returned from the UK, a pariah state as far as the Iranian authorities are concerned.
26. On behalf of the respondent, Ms Isherwood submitted that there had been no material errors. The grounds of appeal amount to a disagreement with the findings of fact which the Judge was entitled to make on the evidence before her.
27. With regard to the finding at [24] that it was unlikely that the appellant would be distinguished from his siblings because of his father, Ms Isherwood referred to paragraph 35 of the reasons for refusal regarding the appellant's claim that he was expelled from school. By his own admission, his younger brother and sister were not expelled, despite the fact that they were children of a claimed anti-regime activist.
28. She referred to questions 100-102 of the appellant's interview where he stated that a few months after his father's arrest, his teacher told him that he received a call from Ettela'at telling the school not to allow him to take part in the examinations because of his father's activities. From that point he was not able to go back to school. When asked whether any of his siblings were similarly expelled from school, he said that his brother is only six years old. He does not go to school and his sister is young and goes to primary school. Nobody has prevented her attending primary school.
29. Ms Isherwood submitted that the appellant's claim that the Ettela'at stated that he was too young to be detained but that he would be detained when he became 18 was properly found by the Judge to be inconsistent with the available background information as set out at paragraph 34 of the reasons for refusal. In accordance with that information, the appellant would have been above the age of criminal responsibility and if the authorities were seeking to arrest him they would have done so and placed him in a juvenile correction and rehabilitation centre prior to going to court.
30. Nor she submitted is the Iranian state averse to executing children under the age of 18, undermining his claim that the officers stated that they would return when he was 18 to arrest him. She referred to the Iran COIS report dated September 2013, paragraph 24.20. She noted that the Judge at [14] had regard to the background information, which would include the information referred to at paragraph 34 of the reasons for refusal.

31. The finding at [23] that there was a legal avenue to deal with the appellant, was evident from the report itself. The judge properly noted that the authorities thus had the opportunity to take lawful action including detention regardless of his age, but they chose not to do so. The fact that they did not indicated that he was not of significant interest to them [23].
32. Ms Isherwood submitted with regard to the mother's email, that it largely related to the appellant's education in the UK. The emphasis throughout was on the appellant going to school in the UK. It did not even allege that the authorities are looking for him. It stated that if he returned he would not be permitted to go back to school or take a job in the civil service. He would not be able to do anything in Iran. She submitted that before the appellant's father's imprisonment, he worked in the supply of lorry parts and had not been in the civil service.
33. With regard to the contention that the Judge had misrepresented the content of the email, she submitted that the further comments were added by his mother in order to bolster his claim.
34. As to the contention that it is inevitable that the appellant would be interrogated on return to Iran, Ms Isherwood referred to the summary by the Tribunal in SB regarding the risks of return. She contended with regard to the relevant factors identified, that no court proceedings relating to the appellant had been taken out in Iran; no summons has been issued against him; the appellant had not insulted the judiciary and the appellant had not been accused of anti-Islamic conduct which would amount to a significant risk factor [45] nor are there any ongoing proceedings [46].
35. Ms Isherwood accepted that the appellant had exited Iran illegally. Having exited illegally was 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.
36. She noted that the Tribunal in SB observed that there was some tension in the recent background evidence as to the precise position of the consequences of illegal exit. On the one hand, it might cause a person to face a relatively modest fine with nothing more untoward than that. On the other, the discovery of illegal exit could result in the person being arrested and taken to a special court at the airport.
37. Moreover, a person who left Iran facing court proceedings other than ordinary civil proceedings could be a risk factor. She submitted that that does not apply to the appellant.
38. Being accused of anti Islamic conduct could likewise constitute a significant risk factor. He had not been accused of such conduct and the remaining risk factor did not apply to him.
39. Ms Isherwood also noted that the appellant had stated in cross examination that he had never been involved in political activities in Iran. Nor had Ettela'at found anything incriminating in the raids on his house. His mother was questioned but was not detained after the telephone call. He was in contact with her about twice a week by Skype because the telephones were tapped.

40. She submitted that the Judge properly found at [26] that the UN Special Rapporteur's report contradicted the appellant's account of communications with his mother.
41. In response, Mr Gayle submitted that the implication in the mother's email might be that raids at their home have continued.
42. Further, the fact that his mother is interested in his education is completely understandable. She is also understandably worried that he would not be able to obtain a job in the civil service if returned.
43. Mr Gayle confirmed that there had been no attempt to obtain any witness statement from the mother setting out what happened to the family since the appellant left Iran.
44. He submitted with regard to SB that an additional risk factor would be that the appellant had made a claim for asylum in the UK and coupled with his father's past activities, this might be seen as anti-Islamic conduct.
45. He submitted that the call from the respondent to the appellant's mother would increase the risk for the appellant. With regard to the USSD report, he again submitted that it does not say that all mails are intercepted. It would therefore not be inevitable that the authorities would in any event have known his whereabouts.

Assessment

46. The Judge at [27] has summarised her findings regarding the appellant. He is an Iranian whose father was detained for anti-regime activities. She accepted that the family home was visited by security forces. She noted that there was the opportunity by the security forces to detain the appellant but they chose not to do so. It is also accepted that the appellant may have been expelled from school. He will be returned to Iran as a failed asylum seeker who left illegally.
47. The evidence before the Tribunal was that the father was detained in April or May 2013. However, the appellant only left Iran some five or six months later [22]. He had claimed that the house was raided every few days after his father was arrested. This the Judge found not to be credible, bearing in mind that on the appellant's account, nothing of significance was found. She also rejected his evidence in this context that the authorities came to the house and threatened to take him, which was avoided after his mother intervened.
48. In making these findings the Judge had regard to the background evidence including the legal system in Iran allowing for the prosecution of those under 18 years of age. The background information also described unlawful and arbitrary detentions. She accordingly found on the basis of that background evidence that there was nothing to prevent the security forces from taking either a legal avenue to deal with the appellant or "a propensity" to take unlawful action.
49. She dismissed the contention that, having had every opportunity to detain the appellant, regardless of his age, they chose not to do so; she went on to reject the appellant's evidence that they did not take action against him because he was under 18. She found that he was not detained at the time as he was not of significant interest to them. Those findings are sustainable and were open to her.

50. It is correct, as submitted, that the Judge's assessment that it was unlikely that he would be expelled from the school, and not his siblings, was not properly reasoned. However, I do not regard this as constituting a material error having regard to the Judge's evaluation of the evidence as a whole.
51. The Judge went on to note the contents of the email sent by his mother on 26 January 2015 [24]. His mother stated that if he returned he would not be permitted to go back to school or to take a job in the civil service or do anything in Iran. In that respect the Judge noted however that his mother made no mention of the risk of imprisonment which had been claimed by the appellant since his screening interview. She found that the mother's concerns are clear and was not persuaded that his fear of treatment amounting to persecution is genuine. In any event, even if the risks are genuine, she was not persuaded that they amount to persecution.
52. It is contended in this regard that the Judge erred by "misrepresenting" the content of the email. In particular, she did not refer to the part of the email where his mother told him to be careful not to come back, otherwise "the rest of your life will be destroyed here." Mr Gayle submitted that anyone reading the email would be aware of the background to the appellant's claim including his risk from the authorities. Moreover, the Judge failed to provide any alternative reasons for the reference to school expulsion or banning from a civil service job if returned.
53. As part of her reasoning the Judge noted however that the respondent's call to his mother on the day he was interviewed, was monitored. His mother however was not detained [25]. She also had regard to the content contained in the UN report [26] which I have set out. She found that this contradicted the appellant's account of communications with his mother: If it were likely that the authorities were interested in his whereabouts they would already be aware that he is in the UK. Accordingly, she did not accept that the telephone call would place the appellant at risk as he claimed.
54. Notwithstanding Mr Gayle's submission that the report does not state that it is 'inevitable' that all emails will be intercepted by the Iranian authorities, her assessment of the likelihood is sustainable.
55. At [27]the Judge summarised the background against which she gave consideration of any risk the appellant might face on return to Iran. The appellant is an Iranian; his father was detained for anti-regime activities; the family home had been visited by security forces who had the opportunity to detain the appellant but chose not to do so; the appellant may have been expelled from school. Against that background she found that his presence in the UK has not worsened his situation in Iran. He will be returned there as a failed asylum seeker who left illegally.
56. In making her findings the Judge had regard to his case set out in his statement made at the time of his claim, dated 26 January 2015, as well as his appeal statement dated 13 May 2015 - [10] and [11]. That included assertions that his mother had sent him a letter 'explaining' that his father remains in detention, p6 para 15; that the telephone call by the respondent to his mother was intercepted by the Iranian authorities; that his mother was contacted by Ettela'at who interrogated her about the call. She had been questioned about his whereabouts during the numerous raids after he fled. Harassment of his family increased since the interception of that call - p1, para 4.

57. However, no attempt was made to provide any witness statement or information from the appellant's mother herself as to what had happened. There was no explanation given as to why such a statement could not have been provided. She had been prepared to send an email to the appellant. In the circumstances the Judge was entitled to note at [25] that there is nothing from his mother to confirm that she was subsequently questioned.
58. The Judge was properly guided by the findings ' in SB, *supra*, [28]. She concluded, adopting the approach set out in the decision, that the appellant would not face a real risk of persecution.
59. I have had regard to the risk factors identified at paragraph [53] of SB. The fact of having exited illegally 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 is likely to face.
60. The appellant did not leave Iran when facing court proceedings. There is no evidence that he ever faced prosecution for any offence or that he faced a trial.
61. Nor did he engage in any conduct likely to be seen as insulting either to the judiciary or the justice system, or the government, or to Islam. He has not been accused of any anti-Islamic conduct.
62. The high water mark of his case was that he needed to protect his mother and siblings on one occasion during a raid on the household after which he was told that they would arrest him when he turned 18. That particular assertion however has been rejected by the Judge for sustainable reasons.
63. In summary, the Judge has given a detailed decision and has made clear findings in relation to the appellant's credibility. She has given proper reasons for the adverse findings that she has made which are accordingly sustainable in the circumstances.

Notice of Decision

The decision of the First-tier Tribunal Judge did not involve the making of any material errors on a point of law. It shall accordingly stand.

No anonymity direction is made.

Signed
Deputy Upper Tribunal Judge Mailer

Date 3 November 2015