



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: AA/06782/2014
AA/06781/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 4 February 2015**

**Decision & Reasons
Promulgated
On 17 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

**MS TABANDEH IRANMANESH (FIRST APPELLANT)
MR AMIRREZA MANSOURI HAMDAM (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr T D H Hodson, Elder Rahimi Solicitors
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant Ms Tabandeh Iranmanesh is a citizen of Iran and her date of birth is 11 October 1960. The second appellant is her son Amirreza Mansouri Hamdam and his date of birth is 11 September 1995. Like his mother he is a citizen of Iran. He is dependent on his mother's appeal.

2. The appellant made an application for asylum which was refused by the Secretary of State on 21 August 2014. The appellant's claim is that she was a member of the radiology department at Kerman Medical University. She talked with her students about social, legal and religious difficulties faced by women in Iran. One of the students reported her to the authorities. On 28 April 2009 she was arrested by Etellat. She was detained for four days during which time she was raped, beaten and questioned about religion and her interrogators quoted things that she had said to the students. The appellant lodged an official complaint at the request of her husband. She was examined by the forensic medical department in order to substantiate her claim about what had happened to her.
3. A few months after her release the dean of the university informed her that she was under surveillance by the authorities that it would be better for her to retire from the position. On 20 February 2010 the appellant retired a month later came to the UK travelling on a visa. She left the UK in September 2011 and travelled to Canada. She came back to the UK in April 2012. In June 2012 the appellant returned to Iran because her husband underwent heart surgery. She returned to the UK on 23 August 2012 and again returned to Iran in December 2012. She returned to the UK for the last time on 3 February 2013.
4. On 1 or 2 June 2013 the appellant's husband was taken by Etellat and questioned about why she had returned to Iran. The appellant and her husband decided that for his protection they should divorce.
5. The appellant's evidence is that on 2 January 2013 whilst the appellant was in Iran she made an application for a new birth certificate (in order to replace her old one) and she attended the registry office where she was given a form to complete. She was asked to indicate her religion and she left this part of the form blank. The official asked her why this was the case and she shrugged her shoulders. He then put the application with her photograph into an envelope and told her to take it to the police for approval. The appellant attended the police station and was told to return the next day. When she returned home her husband told her that she should not go to the police station and it would be better if she did not stay there with him. She went to her father's house in Kerman. She returned to the family home twice in order to collect her belongings. Her husband told her that Etellat had telephoned the family home on four occasions asking about her whereabouts. She left Iran on 3 February 2013.
6. The appellant submitted a number of documents with her application. Her application was refused by the Secretary of State in a decision of 21 August 2014 on asylum grounds and also under Appendix FM and paragraph 276ADE of the Immigration Rules.

7. The appellant appealed against the decision of the Secretary of State and her appeal was dismissed on all grounds by Judge of the First-tier Tribunal Naphtine in a decision that was promulgated on 13 November 2014 following a hearing on 28 October 2014. Permission to appeal was granted by Designated Judge of the First-tier Tribunal Baird in a decision of 10 December 2014. Thus the matter came before me.

The Findings of the First-tier Tribunal

8. The First-tier Tribunal did not find the appellant credible and rejected her account for the following reasons:-
 - (1) It was not credible that the appellant who is educated and intelligent would express subversive ideas to students.
 - (2) It is not credible that the appellant having been arrested and detained for apostasy would be released after four days having not signed a confession. This is not in accordance with reports on Iran.
 - (3) It is not credible that the dean having forced her to retire would allow her to maintain an office at the university for research.
 - (4) It is not credible that when the appellant was asked why she had not ticked the box in her application form concerning her religion she shrugged her shoulders.
 - (5) It is not credible that the appellant and her husband would divorce because they were so concerned about the attention from Etellat and yet she would return to Iran in order to spend Christmas with him.
 - (6) It is not credible that the appellant would bring attention to herself by not completing the form considering that she has no qualms about describing herself as a Muslim.
 - (7) The documentary evidence (a summons dated 2 February 2013 and another of 21 February 2013 and a medical report relating to the appellant of 4 May 2009) is not reliable evidence.
 - (8) It is not credible that the appellant's daughter would rip up a summons as the appellant claims.
 - (9) It is not credible that the appellant would be able to leave Iran should the authorities be interested in her.
 - (10) Neither summons refers to the reason why the appellant was to attend court and the second summons refers to a "second phase" but there was no, first phase.

The Grounds of Appeal and Submissions

9. The first grounds of appeal argues that the Judge did not take into account a second appellant's bundle that was before the Tribunal with a covering letter of 27 October 2014 which contained letters from the appellant's husband, her daughter and son-in-law and medical documents relating to the appellant's husband having heart surgery in Iran. These documents were material to the appellant's appeal. It was confirmed at the start of the hearing that the bundle was before the First-tier Tribunal but it does not seem to have been taken into account by the Judge.
10. The second and third grounds argue that the Judge made a finding based on "reports on Iran" but did not specify what those reports are. There was medical evidence relating to the appellant having been injured after her detention in 2009 which the Judge did not take into account. The Judge did not take into account background evidence produced by the appellant, specifically the US State Department Report of 2013.
11. Ground 5 (there was no ground 4) argues that the Judge's credibility findings are expressions of what he found to be subjectively implausible. In addition the Judge considered the appellant's evidence that she was able to flee Iran without coming to the attention of the authorities on the basis that a summons had been issued. However the summons is dated the same day that the appellant fled, namely 2 February 2013.
12. Both parties made oral submissions. Mr Hodson made submissions in the context of the grounds of appeal, and Mr Duffy made submissions in the context of the Rule 24 response of 23 December 2014. The key finding was that the Judge did not believe that it was credible that she would behave in the way that she asserted which would have brought her to the attention of the authorities. The argument that the Judge did not consider the evidence in the round does not have merit. It is a stylistic argument and the Judge must start somewhere.
13. The medical report in relation to the appellant's injuries is weak and simply establishes that she had bruising. Mr Duffy conceded that it does not appear that the Judge took into account the evidence in the supplementary bundle but it is neither here nor there. The evidence was not material.
14. There was no specific finding in relation to whether or not the appellant was detained, however the Judge did not accept the core of the appellant's account.
15. Paragraphs 56 and 57 of the determination echoes the refusal letter. Mr Duffy conceded that the findings were badly worded. The evidence highlighted in the Reasons for Refusal Letter seems to suggest that rape is used in order to obtain confessions.

Error of Law

16. I find that the Judge made a material error of law and the three main reasons for finding this are as follows:-

(1) It is clear that the Judge did not take into account all of the evidence before him. He did not take into account the evidence contained in the appellant's bundle. It is clear in my view that the Judge was using standard paragraphs at paragraph 45 and 46 of his determination and despite having stated that he had looked at all of the evidence, it is clear that he did not. I note at paragraph 46 the Judge raises Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. This is a standard paragraph that bears no relevance to the appellant's appeal.

(2) The Judge did not take into consideration the evidence in the round. He found that the core of the appellant's account was not credible (for largely subjective reasons). He then went on to consider in isolation the documentary evidence at [69], namely the evidence of court summons and the forensic medical report in relation to the appellant. He found that the documentary evidence was not reliable, but in my view he did not consider this evidence in the round.

(3) Paragraphs 56 and 57 of the determination read as follows:-

“56. It is not credible that if she had been arrested and detained for apostasy, beaten and raped during her four days' detention, that she would be released with no charges and no confession after only four days.

57. That is not in accordance with the evidence supplied in the reports on Iran. Although Etellat detain people for apostasy, they force signed confessions from them - that is the purpose of beating and rape of detainees”.

17. It appears to me that the Judge relied on [29] of the decision letter in reaching conclusions at [56] and [57] of the decision. The Reasons for Refusal Letter makes assertions at {29} but the background evidence which is at [30] (the Country of Origin Report for Iran dated September 2013) does not support the assertion at [29]. It follows that the findings at paragraph 56 and 57 are misconceived and inadequately reasoned.

18. The Judge did not accept that the appellant would be able to leave Iran if she was of interest and one of the reasons for this is that the summons had been issued on 2 February 2013. In my view the Judge did not take into account that the appellant fled on the same day that the summons was issued.

19. Taking into account the cumulative impact of the above errors of law in my view the decision of the Judge to dismiss the appellant's appeal should be set aside.
20. I set aside the decision of the Judge to dismiss the appellant's appeal pursuant to Section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2002.
21. The parties agreed that the matter should be remitted to the First-tier Tribunal for a de novo hearing. It is obvious that none of the findings of the Judge should be maintained.
22. I have considered the Practice Statement of the Senior President of the Tribunals of 13 November 2014 at paragraph 7.2 and in my view it is appropriate to remit the case to the First-tier Tribunal because of the nature and extent of judicial fact finding which is necessary.

Signed Joanna McWilliam

Date 16 February 2015

Deputy Upper Tribunal Judge McWilliam