IAC-FH-AR-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01121/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4th January, 2016	**On 21st January, 2016**

Before

Upper Tribunal Judge Chalkley

Between

SM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Muquit of Counsel
For the Respondent: Mr David Clark, a Senior Home Office Presenting Officer

Direction Regarding Anonymity – Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

The First-tier Tribunal ordered that until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of their family. This direction applies to both the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings. I order that that direction shall continue.

DETERMINATION AND REASONS

1. The appellant is a national of Iran of Ahwazi Arab ethnicity who was born on 16th August, 1979. The appellant arrived in the United Kingdom on 17th May, 2013 and applied for asylum on her arrival. Her claim to asylum was refused. The respondent served the appellant with Notice of Refusal of leave to enter on 8th January, 2015 and the appellant appealed that decision to the First-tier Tribunal.

2. The appellant's appeal was heard by First-tier Tribunal Judge Garbett, sitting at Bennett House, Stoke-on-Trent on 18th June, 2015. In a detailed determination the judge found that the appellant's account of what she claimed had happened to her in Iran was simply not credible. She accepted that the appellant played a role in the Wefagh Party at a low level until the party was closed down and then became involved in a much smaller and more informal group but the judge did not believe that the appellant was politically active to such a degree as to be at risk on return to Iran as a result of her activities undertaken in Iran.

3. The appellant claimed to have been active in the United Kingdom in protesting at events in Iran, attending demonstrations and rallies, and writing articles published on the internet. The judge examined the appellant's *sur place* activities but found that she was not a leader, mobiliser or organiser of these demonstrations or rallies and was not the founder or head of any of the organisations she belonged to although the judge accepted she may be an avid member.

4. The judge noted that the appellant's role is often administrative and that she was a number of demonstrators, part of the crowd, and only apparently leading a protest on one occasion. The judge noted *AB and Others* and concluded that it was unlikely that the appellant would attract attention on her return and asked about her internet activity. She found that the appellant had not produced sufficient evidence to show that the website to which she had blogged or published articles on in the United Kingdom are monitored or that she would necessarily be identified if she returned to Iran. She did not find that the appellant is known within Iran as a committed opponent or someone with a significant political profile or that there are factors which would trigger an enquiry on her return to Iran and concluded that the appellant would not be at risk of persecution.

5. The appellant challenged the determination and was granted permission to appeal on the basis that it was arguable that the judge failed to engage adequately with the totality of the appellant's evidence with regard to her *sur place* activity.

6. Counsel suggested that the judge had erred by failing to take into account the appellant's sister's political activities although he accepted that she had ceased her political activities some years ago following her marriage. He also suggested that the judge had failed to take into account the fact that another sister had been granted asylum in the United Kingdom as the dependant of her husband's asylum claim and that these factors would

cause the appellant's profile to be raised in the perception of the Iranian authorities. He criticised the judge's finding that she found it significant that in oral evidence the appellant was unable to say with any certainty why A had been arrested and suggested that it was wrong of the judge to assume that the appellant had remained at home for the following seven or eight days after A had been arrested because she was moving around. He accepted, however, that the judge had recorded that A's arrest took place on 16th April and that according to the appellant's own evidence she remained at home for seven or eight days before going to her sister's.

7. Counsel suggested that the determination lacked a cumulative assessment of the factors which would cause risk to the appellant on her return. These included her illegal departure from Iran and the fact that she is of Arab ethnicity. The judge refers to *SA (Iranian Arabs – no general risk) Iran CG* [2011] UKUT 41 (IAC), but failed to consider this in the context of someone who left the country illegally, who had written articles published on the internet critical of the Iranian authorities and who had taken part in demonstrations and protests against the Iranian government. Additionally, the appellant's family were known to the Iranian authorities. He suggested that the Iranian authorities are paranoid enough to make enquiries of persons who are of Arab origin and known to have undertaken *sur place* activities and these would cause her to be at risk. She would have to admit to having taken part in demonstrations and she could not be expected to lie about her having written what would be perceived as being articles critical of the Iranian state.

8. Mr Clark urged me to find that there was no error of law on the part of the judge and that the criticisms of the determination amounted only to disagreements with the findings. At paragraphs 28 and 29 the judge found that the appellant was politically active but not to such a degree as to be at risk on return as a result of those activities undertaken in Iran. She did not find it credible that if the appellant were at risk following A's arrest she would remain at her home for some seven or eight days and then destroy only some of the damaging documents she says were stored there only to flee that house leaving the remaining documents. The judge had taken account of these factors and it was open to the judge on the evidence to make the findings she did. The judge very carefully considered *BA* and *SA* and did so in the correct form. *BA (Demonstrations in Britain – risk on return) Iran CG* [2011] UKUT 31 (IAC) was the country guidance. *SA* needs to be considered in the context of *BA*. The judge accepted the appellant's involvement in activities in the United Kingdom but concluded that they would not cause the appellant to be of any risk. The judge also considered *AB and Others (internet activity – state of evidence) Iran* [2015] UKUT 0257 (IAC) and noted that a high degree of activity is not necessary to attract persecution and emphasises that when someone returns to Iran a pitch point is created so that returnees are brought into direct contact with the authorities in Iran who have both the time and inclination to interrogate them and that it is likely that they will be asked about their internet activity. The judge found that the appellant had not provided sufficient evidence to show that the website which he

blogged to or which published her articles in this country are monitored or that she would be identified if returned to Iran. The judge carefully examined the nature of the organisations in the United Kingdom that the appellant had been involved with and considered whether the appellant might be identified as having taken part in demonstrations and protests from photographs. He urged me to find that there was no real risk that on return to Iran the appellant would be persecuted.

9. In responding Mr Muquit referred me to *SA* in which the Tribunal found that being an Iranian Arab returning from the United Kingdom enhances other factors where an Iranian Arab does not risk persecution or ill-treatment solely by reason of ethnicity. He reminded me that the judge had found that the appellant had written blogs and written articles which had been published on the internet. He suggested that publication of these articles may very well have been monitored because they were published on websites which are related to Ahwazi affairs and websites which are critical of the government. He invited me to allow the appeal.

10. In a thorough determination the judge set out clearly the appellant's evidence at paragraph 15. At paragraph 15(xxi) the judge highlights the *sur place* activities undertaken by the appellant since her arrival in the United Kingdom. He draws attention to the fact that they are detailed in paragraphs 61 to 95 of the appellant's witness statement of 3rd March, 2015 and in paragraph 2 of her supplemental witness statement dated 8th June, 2015.

11. At 15(xxi)(a) the judge noted the appellant's membership of the Centre for Combatting Racism and Discrimination in Iran, CCRADI, and that the appellant was responsible for administering the centre's Facebook page and updating and uploading posts. The appellant also attends regular member meetings on Skype and discusses developments, articles, reports and future action plans with the founder. I do not believe that any of those activities are likely to have come to the attention of the Iranian authorities.

12. Similarly, I do not believe that the appellant's work with the Ahwaz Human Rights Organisation in translating articles and reports from Arabic to Farsi and vice versa are likely to have come to the attention of the authorities, but I do believe that articles published on the website of the Ahwazi Studies Centre are very likely to have been monitored.

13. The Ahwazi Studies Centre website, it seems to me, is the very sort of internet site that a paranoid government may very well monitor. The appellant has published two articles on the website dealing with child and adult abuse in schools and honour killings. I have read one article written by the appellant published on the Ahwazi Studies Centre website entitled "*Honour killing with double-edged sword of tradition and law*" which appears at pages 129 to 133 of one of the appellant's bundles. It discusses the cultures where honour killings and domestic violence against women are the most obvious breaches of human rights and suggest that in these cultures normally the men are in power and they are in charge of

the family's finances and control the family's cultural and social behaviour. Yet women in these families are inferior and have to listen to their brothers, husbands and fathers and if they disobey there will be severe consequences. This might be regarded as being critical of the Iranian authority but is not, in my view, an article which is likely to have excited the Iranian government's interest in the appellant.

14. However, the appellant has had several articles published by Iran Wire. The first of these describes celebration of the International Women's Day and describes anti-government activities being undertaken to mark that day. The English translation which I have found at pages 12 and 13 of one of the appellant's bundles and the article I found at page 19 of the same bundle are likely to have attracted the interest of the Iranian authorities. Iranian Wire appears to be a website critical of the Iranian authorities. Some of the articles are published in English, but not all of them. The article at page 19 of the bundle refers to a picture of a Revolutionary Guard commander who appears to be standing next to a body. It refers to one Yunes Asakereh having burnt himself to death and having been humiliated by the Iranian government. The article refers to an explosion in Yemen which prompted the Islamic Republic to send 25 tonnes of medicine to Yemen and transferring 52 injured Yemeni people to Iran for medical treatment. It criticises the government for forgetting that "charity starts from home". At pages 38 to 46 the appellant was apparently interviewed for an article entitled "*Mahabad Explosion case: 12 dead and 3 executions*". The appellant is quoted and described as being a lawyer. I believe that the comments she makes are likely to be viewed as being critical of the Iranian government.

15. I do not think it likely that the appellant's very limited political activities in Iran some years ago are likely to be of any interest to the Iranian authorities on her return. Similarly, I do not believe that the appellant's having taken part in demonstrations and protests in the United Kingdom are likely to have caused her to be identified such that she will be at risk on her return. The appellant's sister in Iran ceased her activities some years ago, albeit under pressure from the Iranian authorities, when she married her husband but nonetheless they ceased. I think it very unlikely that the fact that the appellant's brother-in-law came with her sister to the United Kingdom and claimed asylum is likely to cause the appellant any particular difficulty on her return, but the same cannot be true of the articles which the appellant has written which are expressly critical of the regime. These are published on websites which are likely to be monitored. I believe that there is a very real and serious risk that the appellant's name, articles and political views will have become known to the Iranian authorities. I believe that there is a very real possibility that she will be identified on return to Iran as being someone critical of the regime and thereby face a real risk of persecution.

16. I believe that despite having written a very detailed determination the First-tier Tribunal Judge did err by failing to consider the possibility that as an Iranian of Arab descent returning from the United Kingdom this would enhance the risk to the appellant as someone whose articles critical of the

Iranian authorities, published on the worldwide web, on websites which themselves contain material critical of the regime and therefore likely to be monitored.

17. The making of the previous decision involved the making of an error on a point of law. I set aside the previous decision. My decision is that the appellant's appeal be allowed.

Upper Tribunal Judge Chalkley

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable.

Upper Tribunal Judge Chalkley