Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: PA/07451/2018
PA/07454/2018

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 31 May 2019	**On 18 June 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

SHANGAR ALI MAMODE (FIRST APPELLANT)
HALAWA MOHAMMED HAMADAMINE (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: In person
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, who claimed to be nationals of Iran, have permission to challenge the decision of Judge Howard of the First-tier Tribunal (FtT) sent on 15 August 2018 dismissing their appeal against the decision made by the respondent on 27 May 2018 refusing their protection claim. Permission was granted essentially on two grounds: that the judge failed to make properly reasoned findings on the issue on whether the appellant and her daughter are nationals of Iran; and secondly, that he failed to

properly consider risk on return to the appellants given their Kurdish ethnicity.

2. The appellants attended in person and confirmed that their solicitors would not attend to represent them. I explained to them that I would try and ensure they were able to put their case and that their case was considered fairly. I then heard from Mrs Pettersen who reiterated the points already made by the respondent at the previous hearing. Ms Mamode then made several points emphasising that she and her mother had done all they could to provide the respondent with information about their nationality and home area. She said her mother was ill and her memory was poor and this affected the answers she had given at interview.

3. Given that the appellants' grounds were drafted without legal help and that they appeared before me unrepresented, I have sought to consider all points that can be raised in their favour.

4. Dealing first with the issue of nationality, the respondent's refusal decision set out a number of reasons why it was considered that the appellants had failed to show that they were nationals of Iran including lack of substantiation, incorrect or inaccurate responses at interview when compared to the background information about Iran, inability to use the Iranian calendar, inability to describe anything about Mahabad despite claiming to have been in that town immediately before travelling to the UK, wrongly describing denominations of the Iranian currency (Rial). At the hearing the judge heard from the first appellant (and briefly from the second). He considered their explanation for the above shortcomings in terms of lack of education, the remoteness of their home and the subsistence nature of their livelihood. At paragraphs 20–22 the judge stated:

> "20. The appellants' evidence is at best confused. The inaccurate answers they gave to the respondent's questions seeking to establish their nationality might be explained by a lack of education and living an isolated life. However, the evidence of the first appellant was that their village is a 45 minute drive away from a city and in that city at least one family member lives. They are clearly in regular contact with that family member as they made an unannounced visit on him. Further the second appellant had gone to the city for a hospital appointment. Such appointments must be arranged and paid for.
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> 21. This evidence speaks of a much greater exposure to mainstream life in Iran than they assert. My concern is therefore how they can have such limited knowledge of things Iranian if they live in such close proximity to a city and have the kind of links to the city of which they speak. The simple answer is that they are not from rural Iran.
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> 22. Accordingly I am not satisfied they are Iranian as claimed".

5. I discern no arguable error of law in the assessment made by the judge in these paragraphs. It is suggested by the judge who granted permission that the judge was inconsistent in stating on the one hand that the appellants had shown "limited knowledge of things Iranian", yet on the other hand that their evidence "speaks of a much greater exposure to mainstream life in Iran than they assert". I am unable to agree. It is clear from paragraphs 20–22 read as a whole that the judge did not find the appellants' explanation for the shortcomings in the evidence they gave regarding their nationality (in terms of being from rural Iran) to be consistent with the answers they gave indicating knowledge to be expected of persons from an urban/"mainstream" background. The judge did not mean by "much greater exposure to mainstream life in Iran" that the appellants had in fact demonstrated a credible degree of knowledge of Iran.

6. Turning to the second ground, it was accepted by the judge (as it had been by the respondent) that the appellants were ethnic Kurds. The judge's treatment of where this accepted fact left their claim was set out at paragraph 23:

> "23. The appellant's not being Iranian the remainder of their claim falls away as it is predicated on the notion that the male family members are Iranian Kurds who have been killed by the authorities for their separatist activities and those same authorities are no looking for the appellants. I am further fortified in the finding the appellants are not Iranian when I consider the evidence of the first appellant. Her account of travelling to her cousins and then learning of her father's and brother's arrests she contradicted in her own account. When she sought to elaborate on events she moved further away from her initial assertion that they had gone to the city out of fear. She then contradicted herself on who it was that had told them of the arrests once at the cousin's home".

7. Again, I discern no legal error in the judge's assessment. There was no medical evidence before the judge to indicate that either appellant had memory difficulties. Clearly the core of the appellants' claim to be at risk depended upon them having been targeted by the Iranian authorities by virtue of the alleged activities of their father and brother in smuggling political material into Iran. If the appellants were not Iranian they would not face a real risk of being returned to Iran. The only caveat to that could be if the appellants were stateless persons whose country of former habitual residence is Iran, but on the judge's findings of fact, whatever country they originated from it was not Iran. Hence it was not incumbent on the judge to engage with whether the appellants would be at risk because of their Kurdish ethnicity. The fact that the country guidance case of **SSH (Iran) CG** [2016] UKUT 00308 (IAC) was considered by the judge who granted permission to deal only with the position of males, is not to the point, as the appellants had failed to show that Iran was either their country of nationality or former habitual residence.

Decision

8. The decision of the judge is free of legal error and must stand.

9. The circumstances of the appellants' case illustrate the dilemmas that confront both applicants and the authorities when there is insufficient and/or unsatisfactory evidence relating to nationality. The compass of any asylum-related appeal must be confined to the issue of risk on return, yet the burden of proof to establish the country of reference rests with applicants. Even so, where (as here) no country can be identified, there will inevitably remain issues concerning returnability. Such issues are not within the scope of this appeal, but the appellants would be wise to seek expert legal help from solicitors (it is not obvious to me that their present solicitors have taken steps to assist them in obtaining further evidence) as to what steps they can now take so that they do not remain in limbo.

10. Whilst I do not have sufficient information before me to know the precise position of the appellants within the asylum support system, I find it worrying that the two appellants and child are clearly a family unit but have not been housed in the same accommodation, despite the second appellant clearly needing the emotional support of her daughter and her daughter having to manage as a single mother. Particularly given that it is likely to take some time for the respondent to establish the returnability of the appellants, there is an important issue of their right to respect for family life as a family unit in a country where both appellants have no one else to turn to for support.

No anonymity direction is made.

Signed Date: 14 June 2019

Dr H H Storey
Judge of the Upper Tribunal