IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01496/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 October 2014	**On 20 November 2014**
Prepared 2 November 2014	

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

M H T
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Hodson of Messrs Elder Rahimi Solicitors
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Iran born on 5 November 1985, appeals, with permission, against a decision of Judge of the First-tier Tribunal Hembrough who in a determination promulgated on 29 April 2014 dismissed his appeal against a decision of the Secretary of State made on 19 February 2014 to refuse his application for asylum.

2. The appellant entered Britain on 20 September 2011 and claimed asylum on arrival. The basis of his claim to asylum was that he had been brought up in Tehran where his father owned a motorcycle shop. He was born into the Muslim faith but no longer believed. Before leaving Iran he had studied for a degree in mechanical engineering where he had engaged in freelance work setting up and programming computer networks and computer assembly. He claimed that he had been exempt from military service because of his father's service in the revolutionary guard in the Iran/Iraq war. His mother had fled Iran in 2010 fearing persecution at the hands of her husband because she had engaged in an extramarital affair. Although refused asylum her appeal had been allowed and she was granted refugee status which is valid until September 2016. The appellant's sister now lives in Britain as the dependant of his mother.

3. The appellant said that his father was a violent man with extreme Islamist views who had often been violent towards him and his mother. When the appellant's father had found out about his mother's affair he had beaten her but had been restrained by the appellant. He stated that his father was a commander in the local Basij who insisted that the appellant join under his command. The appellant had done so manning checkpoints and engaging in raids on political and religious dissidents. He had been told to engage in the torture of detainees but had refused and had then been beaten by his father and locked in a storage room of the family home for two days. He was then transferred to administrative duties. During the course of his work he had been required to compile and maintain computer records for detainees and suspected dissidents and he claimed that he had undertaken "small acts of defiance and sabotage" making alterations to the records by changing addresses and swapping photographs. If he recognised a suspect he would warn them that they were under surveillance by calling them from a public phone.

4. In July 2011 he had been assigned to undertake computer repairs at Basij bases. While at one of the bases he was given access to a database and was able to download information about membership and salaries to a USB with which he hoped to damage the Basij in some way.

5. While undertaking administrative work at a base of which his father was the commander two suspects were brought in. He recognised them as fellow students at his university. They were beaten by the Basij before being taken for interrogation. The appellant heard them being accused of being reporters and spies. The men's possessions were taken from them. These included a mobile phone, a camera and a laptop. The appellant noted that they were taken by a member of the Basij to a storeroom on the edge of the building complex and when that member of the Basij returned the appellant took the opportunity to go to the storeroom, find the items and viewed pictures on the camera which showed Basij beating people. As he realised that the photographs would place the men in danger and they were likely to be sent with the laptop and phone for analysis he decided to destroy the evidence by setting fire to the items

using his lighter and various flammable items scattered around the storage room including a mullah's robe and various books and papers which included a copy of the Koran, although he was not aware of that until it was burning.

6. He then left the base and returned home and told a friend who knew the men who had been picked up that their families should be warned and sensitive information disposed of. He then went to the home of another friend and that friend contacted an agent who made arrangements for the appellant to leave Iran. He crossed the border into Turkey on foot.

7. Whilst in Turkey he had contacted his sister who had told him that she had been questioned by their father and two plainclothes security force officers about his whereabouts and contacts and they had shown her a document which authorised them to search the house and his laptop, CDs and other documents had been taken away. The laptop had contained backup files in relation to the Basij membership and salaries which the appellant had taken from the base and notes in relation to books which he had read which were banned in Iran as well as rock music which was regarded as "devil's music" by the Iranian authorities.

8. The judge noted the appellant's evidence and evidence from the appellant's mother who in cross-examination stated that she had no direct knowledge of the circumstances giving rise to the appellant's claim. She had had no contact with him after she left Iran in 2010 until he contacted her from Turkey in 2011 after he had already fled. The judge stated that she had described her husband as "a kind of religious fanatic and supporter of the Islamic regime" and "a vengeful man" and referred to his influence with the Basij. She also stated that her own mother had been asked by her husband about the appellant's whereabouts.

9. The judge set out his findings and reasons in paragraphs 41 onwards of the determination. He wrote:-

> "41. Before making a determination in this appeal I have considered all of the admissible documentation as well as my notes of the oral evidence given by the Appellant and his mother, the submissions made by both representatives and elements of the background country information to which reference was made.
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> 42. I take as the starting point for my consideration the Appellant's mother's claim. She was found to be a credible witness by Immigration Judge Bruce. Her evidence in so far as it is material to this appeal was that her husband was a violent and abusive man who was a dedicated supporter of the Islamic regime. He was a former Revolutionary Guard and a participant in the Basij with connections to the Iranian judiciary. His brother had been a member of the Sepah.
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> 43. In her witness statements she makes reference to several incidents when she was attacked by her husband that were witnessed by the Appellant and in particular to the last incident in 2010 when her

husband, having discovered her affair, would have killed her but for the Appellant's physical intervention. She also confirms that her daughter Maryam had suffered from restricted development and mental health issues since she was a child.

44. However when she left Iran both of her children were living in the family home and as she accepted in her oral evidence she had no direct knowledge of the background to the Appellant's asylum claim and in particular his claimed service in the Basij.

45. As highlighted in the reasons for refusal letter there were one or two inconsistencies in the Appellant's account of the background to his asylum claim as given in interview but then there always are and having regard to the lower standard of proof I consider that it is important to look at the broader picture rather than focussing on minor points of detail. However it is in considering the broader picture that I find the Appellant's account to be lacking in credibility.

46. He was nearly 25 years old when his mother left Iran. His evidence was of an antipathetic relationship with his father involving regular disobedience. He was a mature adult whom it appears was prepared to stand up to his father both physically and mentally as evidenced by his intervention when his father was beating his mother having discovered her affair and his claims to have read numerous books banned by the Iranian regime.

47. Despite his father's fanaticism and commitment to the Islamic regime he had not at that stage been forced into service with the Basij even though it might be considered that he would have been more vulnerable to parental pressure in his teens or early twenties. In this regard I note the observations in the COIS for Iran that membership of the Basij is often seen as a way of gaining access to a place at university.

48. The evidence was that his father was aware that the Appellant held political views contrary to his own and against that background I do not consider it credible that his father would seek, or would be able, to pressurise the Appellant into joining the Basij in 2010 or that the Appellant would accede to such pressure.

49. The Appellant has produced no documentary evidence to show that he was ever a member of the Basij. I reject his evidence that he left his ID card at home and that it has since been seized. His evidence was that on 15 August 2011 he was working at the Ghaem Basij base and that he did not return home after setting the fire. It is reasonable to assume therefore that had this been the case he would have been in possession of his ID card which would have been required to gain access to the base.

50. Given the antipathy that existed between the Appellant and his father I do not consider it to be remotely credible that he would put him in position where he would have access to sensitive data and would be able to engage in subversive activities prejudicial to the security of the Basij and the Islamic regime. Nor do I consider it credible that having

been pressurised into joining the Basij he would openly express political views in opposition to the Basij and Islamic regime as he claims.

51. I found his account of his attempted destruction of the phone, camera and laptop allegedly taken from his friends to be wholly implausible. I do not find it credible that such sensitive materials would be left in the open unguarded. Moreover this is a man with a background in IT. His evidence was that he has worked freelance in computer assembly. I do not find it remotely credible that if he was seeking to destroy data on the devices named he would not simply have removed the SIM and SD memory cards and the hard drive on the laptop. This would have taken seconds. They could have been smashed or dropped down the nearest drain. Instead he claims to have started a fire with all of the attendant risks of discovery with the aim of burning devices which were not obviously combustible and without the use of any form of accelerant throwing onto the pile for good measure a Mullah's robe and a copy of the Quran. Anyone who has tried to burn clothing or a book will know that it takes a very long time to catch fire. I did not find him at all credible when he said that he considered the risk in starting a fire to be less than that of being stopped in possession of the memory cards.

52. I reject the evidence that the Appellant's home was subsequently searched by members of the security services and that incriminating materials were discovered. It was not explained why, if his father was a Commander in the Basij, it would be necessary for the authorities to obtain a search warrant. Surely he would simply have invited them in and yielded up the relevant materials.

53. Looking at the evidence in the round even having regard to the lower standard of proof I find that I have not been satisfied that the Appellant was ever a member of the Basij or that he engaged in the subversive acts he has described or any subversive acts or that he is wanted by the Iranian authorities. Whilst his mother's evidence was that his father had made enquiries of her own mother as to the Appellant's whereabouts I consider that this is nothing more than a natural consequence of his unexplained disappearance.

54. I suspect that what had happened is that his mother's flight from Iran caused a further deterioration in the relations between the Appellant and his father, who perceived the Appellant to have taken her part, and that this is what caused him to leave Iran and join his mother in the UK. Although the oral evidence was that there had been no direct contact between the Appellant and his mother after she left Iran it is clear from her witness statement dated 3 February 2011 (paragraph 53) that they had indirect contact via her brother.

55. Although it appears that the Appellant exited Iran illegally I do not consider that any of risk factors set out SB (risk on return-illegal exit) Iran CG [2009] UKAIT 00053 are present in this appeal. In particular I have considered whether there is a real risk that he may be denounced by his father upon return. However given the long history of antipathy between the two, the fact that he was not denounced by his father whilst living in Iran and his oral evidence that his father was unaware

of his anti-Islamic views I find that I have not been satisfied that there is a real risk that he would accused of anti-Islamic activity upon return.

56. Similarly I have not been satisfied that there exists a real risk of the Appellant suffering serious harm at the hands of his father. Although I have accepted the evidence that his father was a violent and abusive man, time has moved on. The Appellant is now 28 years old and for the reason I have identified at paragraph 46 above I am satisfied is more than capable of looking after himself and of living independently of his father and exercising his right of free movement within Iran.

57. In summary having regard to all of the evidence before me I find that I have not been satisfied on the lower standard of proof applicable that this Appellant has established that there is a real risk or a reasonable degree of likelihood that he will suffer persecution in Iran for one of the reasons cited in the 1951 Convention or that he would face a real risk of suffering serious harm by reason of being returned there."

10. The appellant appealed but permission was refused in the First-tier. The application was renewed in the Upper Tribunal and on 24 June 2014 Upper Tribunal Judge Pitt granted permission.

11. The grounds asserted that the judge had erred in finding that the appellant was not a member of the Basij and that that finding was based on a reason which was not open to him which was that the appellant had failed to produce any documentary evidence to show that he was ever a member of the Basij and that had he been a member of the Basij he would have had a Basij ID card and would have had that at the time of the incident at the Basij base and would therefore have been able to bring it to Britain. It was claimed that the judge was requiring corroboration and that that was an error of law. It was also pointed out that that reason was not given in the letter setting out the respondent's reasons for refusing the claim.

12. The second ground argued that the judge was wrong to say that the storeroom would not have been left unlocked stating that in any event it was a storeroom within the secure Basij base but the judge was wrong to find that there could not plausibly ever be security lapses by any organisations such as the Basij.

13. The third ground alleged that the judge had merely speculated in stating that what had happened had merely been a deterioration in the relations between the father and the appellant after his mother had left Iran. In any event it was stated that it was not a matter of speculation that the appellant's father was a violent and intolerant man who had attempted to kill or at least seriously harm the appellant's mother on account of the discovery of an affair. That being an unchallenged starting point it was not, it was argued, open to the judge to assert that there was no risk that the father would use his power and influence to adverse effect against the appellant were he to return. It was claimed that the appellant would therefore be in danger from his father.

14. When granting permission to appeal Upper Tribunal Judge Pitt stated that:-

> "Having read the determination of the FtTJ, I find, just, that there may be something in the issue concerning the Basij card not having been put to the appellant at any point and so not having a chance to address it.
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> It may also be, of course, that after hearing submissions a UTJ concludes that even if he did not this was not material to the decision and that the other grounds have no merit but I find that the grounds are arguable."

15. At the hearing of the appeal before me Mr Hodson referred to the grounds of appeal arguing that there would be no reason for the appellant to have had his identity card on the base and that the Basij bases would not be places where it would invariably be the case that every door would be locked. The Basij were a voluntary paramilitary group without formal guidance and therefore there would be no requirement for the appellant to have had the identity card with him at all times.

16. He referred to the appellant's witness statement and to the appellant's mother's witness statement although it was noted that she had only referred to the appellant's father being involved with the Basij and not being in any way a leader of a group. He pointed out that the appellant's statement had stated that his father was a "senior member, a 'commander', of the local Basij". I asked Mr Hodson what the appellant's mother had said about her husband and he referred to paragraph 39 of the appellant's mother's statement in which she had said:

> "My husband used to participate with the Basij committed *(sic)* and revolutionary guard and one of his friend's *(sic)* from this was friends with the judge in the court."

17. Mr Hodson went on to say that it was not clear that Judge Hembrough had taken the view that the appellant's father was not a member of the Basij but had merely considered that the appellant would not have been forced to join. He noted that it was argued from the background evidence that joining the Basij was something which people would do at an earlier stage of their lives – possibly as a means of securing university entrance but he referred to the appellant's answer to question 87 of the interview when the appellant had been asked if he had had to undergo any form of training to become a member of the Basij. The appellant replied:-

> "No. From childhood my father sent me to camping and learn the holy book and I grew up in this atmosphere."

18. He asserted that the judge had merely made assumptions about the appellant and his father and that various issues on which the judge relied had not been raised in the refusal letter and therefore had not been dealt with in the appellant's appeal statement. In any event he pointed out that the appellant had stated that there had been a raid on his home and all

the documents had been taken away and therefore he would not have been able to produce an identity card in any event.

19. In reply Mr Nath referred to the Rule 24 statement in which it was submitted that the judge reached findings which were entirely open to him that if the appellant had been a serving member of the Basij he would have possessed an identity card and it was open to the judge in any event to conclude that the appellant's claim to have left the card at home was not credible. The notice stated that the burden of proof lay on the appellant and it was for him to discharge and that he had not done so. The grounds merely amounted to a disagreement with the way in which the judge had approached the evidence and he argued that the adverse credibility findings were fully open to the judge.

20. Mr Nath went on to refer to the refusal of permission in the First-tier in which Judge Zucker had stated that:

> "The determination is to be read as a whole. Rather than looking for corroboration the judge in reality rejected the appellant's evidence to the effect that he was not required to carry ID and it follows from what followed in the appellant's narrative that he could not have left the ID at home as he contended. That was a finding open to the judge. The grounds taken as a whole amount to no more than a disagreement with the findings of the judge who, having applied the correct standard, simply did not believe the appellant's account for reasons which were adequately set out."

21. He asked me to find that the assessment of the judge was fair and that he had reached conclusions which were properly open to him on the evidence.

22. In reply Mr Hodson stated that the grounds were not merely a disagreement. There were findings which were little more than speculation.

Discussion

23. I have considered the determination in the light of the grounds of appeal and submissions to me. I note that the judge correctly set out the relevant burden and standard of proof and that he did consider the subjective evidence and background country information before him. He set out in considerable detail the basis of the appellant's claim and took into account what the appellant's mother had stated in her evidence before the First-tier Judge who had allowed her appeal. He accepted that her evidence had been that the appellant's father was a violent and abusive man who was a dedicated supporter of the Islamic regime. He was a participant in the Basij. He pointed out that his mother had said that she had no direct knowledge of the background to the appellant's asylum claim or his claimed service in the Basij.

24. The judge properly gave himself the self-direction (in paragraph 45) that one or two inconsistencies were not relevant and it was necessary to have to consider the broad picture.

25. In paragraph 46 he noted that the appellant had stood up to his father when his father had attacked his mother. He had read books banned by the Iranian regime and that he had not been forced to join the Basij until after his mother had left the country. By that stage he was nearly 25. The judge took the view that those sets of circumstances made it unlikely that the father would force the appellant to join the Basij or that the appellant would agree to do so. That is, I consider, a conclusion which was open to the judge. The background evidence indicates that those who join the Basij join it at a much earlier age and that they do so because that is what they wish to do or that they feel that it would be of use to them.

26. The judge followed on that observation with the comment that the appellant could not prove by the production of an identity card his involvement with the Basij. While I accept the argument that the appellant might not have had to carry his identity card around with him as presumably everybody on the base would know who he was if he were indeed a member or working for the Basij that finding does not, I consider, undermine the judge's findings that the appellant would have been unlikely to have been a member of the Basij. The judge goes on to state that given that antipathy existed between the appellant and his father he did not consider it remotely credible that he would have been put in a position where he would have access to sensitive data and would be able to engage in subversive activities. Again I consider that that conclusion was open to him.

27. In paragraph 51 the judge refers to the appellant's attempted destruction of the phone, camera and laptop. He did not find it credible that such sensitive materials would be left unguarded or indeed find it "remotely credible" that if the appellant was seeking to destroy data on the devices he would not simply have removed the SIM and SD memory cards and hard drive and the laptop. That would have taken seconds.

28. I consider that that conclusion was one which was fully open to the judge to make. Given the appellant's background in IT he would surely have been able to remove incriminating information without the, less effective, method of setting fire in a storeroom which would be likely to be noted and put out and particularly that the appellant would be unlikely to have used a mullah's robe and a Koran.

29. Similarly I consider that the judge gave sensible reasons for finding that there would not need to be any warrant for the entry into the appellant's home.

30. I consider that the conclusions of the judge in paragraph 53 are entirely open to him. It is the duty of the judge to decide what evidence he

believes and what he does not. This duty has been fulfilled by the judge, who made it clear why he did not believe the appellant's evidence. It is not for the judge to produce evidence on which to base his findings that there is a lack of credibility in the evidence of the appellant: it is for the appellant to discharge the burden of proof - that burden is on the appellant.

31. The Judge had taken into account the evidence of the appellant's mother and, of course, was entitled to place weight on the fact that she had no direct knowledge of the appellant's involvement with the Basij and to point out that there had been some contact between the appellant and his mother through his uncle. Moreover, the appellant's mother's statement makes no reference to her husband being a commander in the local Basij.

32. The Judge was further correct to point out that the appellant, who is now 28, was not at risk of ill-treatment from his father and that indeed internal relocation would be open to him. Again he properly considered the issue of risk on return in paragraph 54 and his conclusions were was again open to him.

33. I therefore consider that there is no material error of law in the determination of the Judge of the First-tier Tribunal and conclude that his decision dismissing this appeal on asylum grounds and indeed also on human rights grounds shall stand.

34. I have considered it appropriate to make the anonymity direction set out below.

Decision

The appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date **17 November 2014**

Upper Tribunal Judge McGeachy