IAC-AH-DP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/02069/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 October 2015	**On 6 November 2015**

Before

UPPER TRIBUNAL JUDGE GOLDSTEIN

Between

Z G-N
(ANONYMITY DIRECTION PRESERVED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Pretzell, Counsel instructed by Messrs Aden & Co Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant, a citizen of Iran born on 18 November 1980, against the decision of a First-tier Tribunal panel who sitting at Hatton Cross on 4 July 2014 and in their determination promulgated on 26 September 2014 dismissed her appeal against a decision of the Respondent dated 20 September 2013 to make a deportation order by virtue of Section 32(5) of the UK Borders Act 2007. In that regard her appeal was dismissed on asylum and human rights (Articles 3 and 8) grounds.

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2. Whilst permission to appeal was refused by the First-tier Tribunal, I was persuaded to grant permission on the renewed application to the Upper Tribunal, in that Ground 1 in summary, contended that the determination was "flawed in its failure to take into account the positive credibility findings about (the Appellant's) relationship to the husband". I considered that the renewed Ground 1 to have arguable merit, in consequence of what was said at paragraph 21 that for the sake of completeness I would set out below:

> "The grounds in no way seek to be misleading. Her asylum claim has always been that she is at risk of ill-treatment on being returned to Iran because of the way she will be perceived. It is accepted the Judge did not find her credible to be a Jehovah's Witness or to have committed adultery. But the Judge self-evidently found that she had been married, had been the victim of domestic violence and had left Iran without the permission of her husband. It is the risk of her being accused and perceived of anti-Islamic conduct by virtue of having left her husband which is a critical issue. It is the risk that on return immigration and security officials would immediately identify her as a married woman who has been out of the country illegally without her husband's permission. There is a real risk that she will be perceived as an adulteress woman. There is a risk that she will be accused of anti-Islamic conduct as a result. This is the concern that has not been addressed and which was canvassed before the Judge in oral submissions and in the skeleton (paras 14-15)."

3. Indeed I noted that at paragraphs 14 and 15 of the skeleton argument that was before the First-tier Tribunal panel, the following was stated:

> "14. The background evidence makes clear that a woman cannot divorce her husband without his consent. There is every reason to believe particularly given her father's report and attitude to the break up, that the husband refused any such consent.
>
> 15. It was undisputed that the Appellant left Iran. Again the background evidence makes clear that a woman needs her husband's consent to leave Iran. There is every reason to believe this was not forthcoming and she exited illegally."

4. In that regard reference was made to the pages in the bundle that was before the panel to support those contentions.

5. This was also reflected in Mr Pretzell's skeleton argument dated 27 October 2015, that he elaborated upon in his oral submissions before me. It was his contention that the findings of the panel in their determination at paragraphs 121 and 127 respectively, particularly in relation to the Appellant's illegal exit from Iran were irreconcilable and consequently unsustainable. It would be as well therefore to set out those two paragraphs to place his submissions in context and in which the relevant passages within those paragraphs stated as follows:

> "121. Whilst there are elements of her account as we have said that are entirely plausible in relation to an arranged marriage and violence in the marriage, we are unable to accept even to the lower standard the other elements that she has put forward in relation to the discovery of

> the adulteress relationship, the flight to Greece and then what happened with her husband once in Greece and how she came to the United Kingdom. It is not for us to be able to give a definitive version of what must have happened, it is for the Appellant to establish to the low threshold her case.
>
> ...
>
> 127. In summary we do not accept the claimed threat from her husband or that there is or has been a judgment against the Appellant for adultery, notwithstanding the witness whose husband allegedly had a conversation with a person believed to be the Appellant's father and as a result of that we do not accept that she has shown that she has at any real risk of serious harm if returned to Iran. **Whilst it may be that she left the country illegally, we do not accept that it has been shown that that of itself will put her in danger**." (Emphasis added)

6. When this appeal came before me on 28 October 2015 my first task was to decide whether or not the determination of the panel disclosed an error or errors on a point of law such as may have materially affected the outcome of the appeal. Upon the conclusion of the parties' submissions I was able to tell them that I was so persuaded.

7. It was notable that Mr Tarlow for the Respondent, opened his submissions by immediately accepting that there was "a lacuna within paragraph 121 concerning the circumstances of how the Appellant left the country and whether it was with or without the permission of her husband". He did however continue, that at paragraph 127, the panel had stated "whilst it may be that she left the country illegally, we do not accept that it has been shown that that of itself will put her in danger". Mr Tarlow submitted that this was a finding of fact that was open to the Tribunal to make and that upon reading the determination as a whole including the panel's adverse credibility findings, their determination could properly stand.

8. As reflected in the grounds and further raised by Mr Pretzell before me, in making this observation, the panel were expressly referring to the country guidance of the Tribunal in SB (risk on return – illegal exit) Iran CG [2009] UKAIT 00053. There the Tribunal specifically found that:

> "45. It is plain from the background evidence before us that being accused of anti-Islamic conduct amounts to a significant risk factor in respect of likely treatment a person will face on return."

9. The Tribunal in SB also held inter alia as follows:

> "(ii) Iranians facing enforced 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 level of difficulties he or she is likely to face**.

(v) **Being accused of anti-Islamic conduct likewise also constitutes a significant risk factor."** (Emphasis added)

10. It is apparent to me that these were matters with which the First-tier Tribunal panel failed to engage. They failed to assess the risk to the Appellant on return to Iran as someone who had exited the country illegally, potentially without her husband's permission and who would be questioned by the authorities upon her return to Iran both in relation to her reasons for illegal departure as well as in relation to her reasons for remaining in the UK for a total of five years.

11. Mr Pretzell rightly reinforced that contention within his skeleton argument, pointing out that the panel failed to engage with the argument that the Appellant's unlawful exit from Iran coupled with her having spent five years in the United Kingdom as a married woman without a husband, might on return, expose her to the accusation that she had been guilty of un-Islamic or anti-Islamic conduct particularly in light of the fact that the Iranian authorities would be aware that she had claimed asylum in the United Kingdom.

12. Further, the November 2014 Country Information and Guidance entitled "Background Information including Actors of Protection, Internal Relocation and Illegal Exit" postdates by five years the decision in SB and at paragraph 2.12.1 it states that:

> "According to Article 34 [of the Penal Code] any Iranian who leaves the country illegally, without a valid passport or similar travel document, will be sentenced between one and three years' imprisonment or will receive the fine between 100,000 and 500,000 Rials.
>
> In order to deal with the cases relating to illegal departure, a special court is located in Mehrabad Airport in Tehran. Its branch number is given as 1610. If an Iranian arrives in the country without a passport or any valid travel documents, the official will arrest them and take them to this court. The court assesses the background of the individual, the date of their departure from the country, the reason for their illegal departure, their connection with any organisations or groups and any other circumstances. Dependent on the outcome of the court's investigation, the Judge will decide the severity of the punishment within the parameters of Article 34."

13. Mr Tarlow submitted that mindful of Article 34, the fact remained that the Appellant would be returning to Iran with "some form of travel document" and that in such circumstances the Appellant would not fall into the category of an Iranian arriving in the country "without a passport or any valid travel document" such as would lead an official to arrest her and take them to this court.

14. Such a submission fails to appreciate that the background material appears to suggest that whether with or without a travel document, the

Appellant in the circumstances would indeed be likely to be questioned. In that regard Mr Pretzell referred me to IK (returnees – Records – IFA) Turkey CG [2004] UKIAT 00312 where the Tribunal gave guidance on this issue and where the Tribunal had inter alia this to say:

> "85. Clearly further information may arise from the questioning of a returnee by the police in the airport police station. Mr Grieves submitted that a person should not be expected to lie to the authorities during questioning in order to avoid persecution. Ms Giovannetti in her written reply stated the Home Office position as follows:
>
> > '*The Secretary of State accepts that an individual detained and transferred to the airport police station would be interrogated and that it is reasonably likely that further checks would be carried out. However the nature and extent of such interrogation and checks is likely to be related to the reason that the individual was stopped. So for example a person who has not had valid documents is likely to be questioned in order to establish his identity. An individual who is thought to have left on false documents is likely to be questioned about how and from whom he obtained them.'"*
>
> The Secretary of State does not suggest at (and never has suggested) that Adjudicators should seek to proceed on the basis that an individual can lie about his background to the circumstances. *The right approach is to assess what questions are likely to be asked of the individual and what his responses are likely to be"* (page 12).

15. Mindful of that concession it is clear that it is for the Judge in each case, to assess what questions are likely to be asked and how a returnee would respond without being required to lie.

16. Mindful of the above guidance, it was apparent to me upon a careful reading of the panel's determination, that there was in this context, a failure to assess the risk to the Appellant on return to Iran. There was for example, no finding as to whether or not the Appellant left Iran with or without the permission of her husband, a matter which in itself is in contravention of Iranian law and the panel's finding on that issue alone, would have assisted them, mindful of the guidance in SB, in determining the extent to which the Appellant might be at real risk on return, notwithstanding whether she exited Iran illegally, and whether she "would face difficulties with the authorities for other reasons (in that) such a history could be a factor adding to the level of difficulties he or she is likely to face (and that) being accused of anti-Islamic conduct likewise also constitutes a significant risk factor".

17. Thus in my view, it was not enough for the panel to state that "whilst it may be that she left the country illegally we do not accept it has been shown that that of itself will put her in danger".

18. I find in any event, that there is, a contradiction in the findings of the panel as between paragraphs 121 and 127 of their determination. I am mindful that at paragraph 121, the panel stated that there were elements of the

Appellant's account "as we have said that are entirely plausible in relation to an arranged marriage and violence in the marriage" but they were unable to accept "the other elements that she has put forward ...." The panel continued at paragraph 121, that it was not for them "to be able to give a definitive version of what must have happened". At paragraph 127 the panel stated inter alia that "whilst it may be that she left the country illegally we do not accept that it has been shown that that of itself will put her in danger".

19. In that regard and as Mr Pretzell rightly submitted, one could not have it both ways. Either the Appellant illegally exited Iran or she did not. These are irreconcilable views and even if taken at their highest, it followed that the panel were not in a position to say that they did not accept that it had been shown that her illegal exit would of itself put her in danger, without taking full and proper account of the guidance in SB to which I have above referred.

20. I repeat that no finding was made as to whether the Appellant left Iran with the permission of her husband. A married woman under Iranian law is not allowed to leave the country without the permission of her husband and as Mr Pretzell submitted, an Iranian court would be interested and ask questions as to how the Appellant left the country and why, and what she was doing abroad, and why she was returning. Thus in order to make considered findings as to what would happen if the Appellant faced with such questioning would answer truthfully, the panel were required to make findings as to whether she left the country clandestinely and whether with or without the permission of her husband. The difficulty in this case, is that the panel could not make a finding on that or reach a conclusion. See IK above and Ms Giovannetti's concession to which I have referred.

21. It was the task of the panel to determine whether the Appellant was at real risk on return to Iran and in my view a key element in that crucial consideration was overlooked.

22. Mr Tarlow having accepted there was "a lacuna" in the panel's reasoning at paragraph 121, explained that if I were minded to set aside the panel's determination, I should nonetheless preserve their adverse credibility findings in relation to the Appellant's claim to have converted and become a Jehovah's Witness and that she would continue to practise as such, were she to return to Iran. He did however, agree with Mr Pretzell, that in such circumstances, the proper course would be to remit the case back to the First-tier Tribunal for a fresh hearing.

23. Mr Pretzell urged me not to preserve any of the panel's findings, on the basis that the material errors of law identified, clearly tainted the panel's entire reasoning. I would agree and my conclusion in that regard has been reinforced by the fact that at paragraph 125 of their determination the panel were clear that inter alia:

> "When we weigh all the elements, we do not find her credible and ask ourselves whether we can accept even to the lower standard, that the

> Appellant has shown that she is genuine in her conversion and would if returned to Iran continue as a Jehovah's Witness and would want to go knocking on people's doors to try and convert them. **In the light of the above findings we do not find that we can accept that either."** (Emphasis added)

24. Clearly therefore the panel had in mind other aspects of their adverse findings in reaching their conclusion that the Appellant had not converted to a Jehovah's Witness as she claimed. It follows that the material errors of law identified have tainted all of their findings and none of them in such circumstances can be preserved.

25. In the circumstances, I agreed with the parties' request, that having regard to the errors of law found, the length of the hearing (estimate at three hours) and where I was told by Mr Pretzell that there would be at least four witnesses to give evidence including the Appellant, that there were highly compelling reasons falling within paragraph 7.2(b) of the Senior President's Practice Statement, as to why the decision should not be remade by the Upper Tribunal. It was clearly in the interests of justice that the appeal of the Appellant be heard afresh in the First-tier Tribunal on all issues at large.

25. For the reasons I have given and by agreement with the parties, I conclude therefore that the appeal should be remitted to a First-tier Tribunal Judge other than First-tier Tribunal Judge Easterman to determine the appeal afresh at Hatton Cross Hearing Centre on the first available date. For that purpose I am told that a Farsi interpreter would be required.

26. For this purpose, anonymity is to be preserved.

Decision

The First-tier Tribunal erred in law such that the decision should be set aside and none of their findings preserved. I remit the making of the appeal to the First-tier Tribunal at Hatton Cross before a First-tier Tribunal Judge other than the Judge to whom I have above referred and other than Sir Geoffrey James – Non-Legal Member.

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 30 October 2015

Upper Tribunal Judge Goldstein