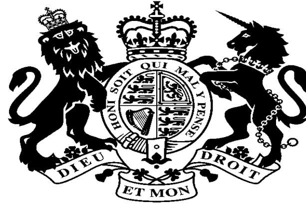

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA/00785/2013

**THE IMMIGRATION ACTS**

**Heard at: Field House**
**On: 16th October 2017**

**Decision & Reasons Promulgated**
**On: 23rd October 2017**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**MS**
**(anonymity direction made)**

Appellant

**And**

**The Secretary of State for the Home Department**

Respondent

**For the Appellant:** **Mr Behbahani, Behbahani & Co Solicitors**
**For the Respondent:** **Ms Pal, Senior Home Office Presenting Officer**

**DETERMINATION AND REASONS**

1. The Appellant is a national of Iran born in 1993. He appeals with permission[1] against the decision of the First-tier Tribunal (Judge Walker) to dismiss his protection appeal.

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[1] Permission was refused by First-tier Tribunal Judge JM Holmes on the 12th March 2014 but granted upon renewed permission by Upper Tribunal Judge Peter Lane (as he then was) on the 16th April 2014

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**Anonymity Order**

2. This appeal concerns a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

> "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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

**Background**

3. The Appellant's claim is that he faces a well-founded fear of persecution in Iran for reasons of his imputed political opinion. His account, as advanced to the First-tier Tribunal, can be summarised as follows:

- Whilst in Iran the Appellant had an interest in collecting caricatures/cartoons of people from public life, mostly of political figures. If he saw such a cartoon online he would download it and save it to his PC.
- In 2011 he was introduced by his father to a local newspaper editor, a Mr P. The Appellant's father worked in a bank and had met Mr P through business there. He asked Mr P to give the Appellant English lessons.
- During these lessons Mr P became aware of the Appellant's collection of cartoons and asked for a copy. The Appellant copied it and gave it to him on a USB stick.
- Around the same time Mr P helped the Appellant to complete a UK student visa application form. This had involved Mr P taking copies of various documents belonging to the Appellant and providing them to a visa agent.
- The Appellant got his visa and came to the UK on the 28th March 2011.
- On the 21st January 2012 the Appellant received a telephone call from his father saying that the authorities had raided their home. They were looking for the Appellant and had confiscated his computer, as well as a number of images/posters of Mousavi. They asked why the Appellant had gone to the UK.
- On the 24th January 2012 the Appellant's father received a call from Mr P who told him that he had been arrested on the 19th January and had only just been released. He said that the authorities had raided the newspaper's office and had taken documents away. Mr P was

concerned that they may have found the USB stick with the cartoons on it, and also the Appellant's copy documents leftover from when Mr P had assisted him with the visa application.

- The Appellant hoped that it would blow over. On the 7th April 2012 his father received another visit from the authorities. They said that they had recovered a file on the Appellant's computer which matched that found on the USB: the political cartoons. The men who interrogated the Appellant's father said that the Appellant should come back from the UK as quickly as possible; they were of the view that he had not gone to the UK to study.
- They came back on several occasions. They said that they knew that the Appellant's visa had expired. They said that they have obtained a warrant for his arrest.
- At the date of the First-tier Tribunal hearing the last visit that the Appellant's father had received from the authorities had been in December 2013 when he had been physically assaulted (hit in the face) during a brief period of questioning.

4. It will be observed that the events at the heart of this claim occurred in 2011. This demands some explanation as to why they are only now being considered by this Tribunal. The Appellant arrived in the United Kingdom in March 2011. He claimed asylum on the 24th April 2012, shortly after, he says, being informed by his father of the events in Iran outlined above. The Respondent promptly considered and rejected the claim on credibility grounds in a letter dated the 17th May 2012. I very much regret to say that the case has since languished in the Tribunal. The appeal was dismissed on the 25th February 2013 by First-tier Tribunal Judge Oliver; that determination was set aside for error of law by Upper Tribunal Judge Gleeson on the 2nd August 2013. The appeal was heard *de novo* by First-tier Tribunal Judge Kimnell who in a determination dated 9th September 2013 dismissed it; that determination was set aside for error of law by Deputy Upper Tribunal Judge Appleyard on the 12th November 2013. Thus by the time it came before Judge Walker it had already been heard twice.

5. Judge Walker dismissed the appeal. He did not believe the account. He considered that there should have been a supporting statement from the Appellant's father or Mr P. It noted that there was country background material to support the contention that a Mr P had been arrested and detained, but that he had also been released. This would tend to indicate that even if the Appellant were telling the truth, he could be of no further interest to the authorities.

6. Permission to appeal against that decision was granted on the 16th April 2014. There then followed a lengthy delay in having the matter listed before the Upper Tribunal. It would appear that there were two reasons for this. First, the case was 'stacked' behind SSH and HR (illegal exit: failed asylum

seeker) [2016] UKUT 308 (IAC), that is to say it was adjourned pending the outcome of that country guidance case. Then it would seem, very unfortunately, that the file was mistakenly destroyed as a result of an administrative error.

7. The matter first came before me on the 19th June 2017 when I heard submissions from the parties; they received my sincere apologies for the delay, which I reiterate here. Whilst both Mr Behbahani and the Secretary of State's representative that day, Ms Isherwood, made very helpful submissions I was unable to deal with the matter because none of the relevant documents were available. The file was subsequently 'reconstituted' with the assistance of the parties, for which I am grateful. I am particularly indebted to Mr Behbahani who has represented his client's interests, and assisted the Tribunal, with exemplary professionalism.

**The Error of Law**

8. At that hearing on the 19th June 2017 Mr Behbahani submitted that the decision of Judge Walker contains the following errors in approach such that the decision should be set aside:

   (i) It unreasonably and impermissibly required corroboration in a protection case; *in particular* in drawing an adverse interest from the failure to produce a witness statement from Mr P.

   (ii) It failed to consider relevant evidence; *in particular* the Appellant's submission that there were other factors in his case [§45] and his claim that his father was assaulted in December 2013.

   (iii) The determination contains a material error of fact/misapprehension as to the Appellant's case. It is submitted that contrary to the conclusions at [§35 & 38] the case does not turn on whether the Iranian authorities have an ongoing interest in Mr P.

*Ground (i): Corroboration*

9. At the centre of the First-tier Tribunal's reasoning is this point. Mr P is still in Iran. He is still in contact with the Appellant's father. The Appellant's father knows that his son is seeking protection because of the adverse interest shown in him by the Iranian authorities. The Tribunal notes that no evidence has been produced from Mr P, nor is there any evidence that steps have been taken to provide the same. It concludes [at 36]: "the fact that no steps have been taken to do this leads me to doubt the voracity (*sic*) of the Appellant's account of events". Mr Behbahani protests that this was an unreasonable stance for the Tribunal to take. There is no requirement of corroboration in asylum appeals. The Secretary of State for the Home Department submits that the Tribunal was entitled, in the circumstances, to draw the negative inference that it did. The Appellant acknowledges that his father still has the

ability to contact Mr P and no explanation was offered for the absence of his evidence.

10. It is a well-established principle of asylum law that refugees should not be expected to produce documentary corroboration of their claims. The origins of this principle are to be found in paragraph 196 of the UNHCR Handbook[2]:

> "196. It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents …"

11. In TK (Burundi) v Secretary of State for the Home Department [2009] EWCA Civ 40 the Court of Appeal considered whether this long-standing principle applied where the evidence in question was not produced despite it being "readily available". In that case an appellant failed to provide any evidence that he had a child in the UK as claimed. The Court held that the Tribunal had been entitled, in those circumstances, to place little weight on his evidence of family life. No evidence had been produced from the child or the mother, both of whom were living in the same city as the appellant. Nor had any explanation been offered about why their evidence was missing.

12. I am not satisfied that a witness statement from Mr P falls into the category of "readily available" evidence discussed in TK (Burundi). The evidence here is that Mr P is a newspaper editor in Iran. He has already been arrested and detained for unspecified political 'crimes'. Two obvious inferences can be drawn from those facts. First, there is a reasonable likelihood that Mr P is under surveillance: if authority is needed for that proposition see for instance the entirety of the Respondent's Country Policy and Information Note *Iran: Journalists and internet based media* (Version 2.0) published in October 2016. Second, it is reasonably likely that he would like to avoid further arrest: see for instance section 2.2.2 of the aforementioned CPIN: "the Iranian authorities reportedly harass, detain, abuse, torture, and use vaguely worded criminal provisions to prosecute, flog and otherwise severely punish publishers, editors and journalists". In those circumstances it appears to me perverse to assume that Mr P would be in a position to provide a statement, or that he would be amenable to being contacted with a view to so doing. This is the very point made by the Appellant (in respect of his father) at paragraph 3 of his witness statement dated 28th August 2013:

[2] HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees

"... they have threatened him by saying that if they ever find evidence that he is somehow complicit with me or is in any way helping me escape from them he would too be liable to prosecution".

13. I am satisfied that this error is made out. As this issue forms the centrepiece of the Tribunal's reasoning it follows that the decision must be set aside.

*Grounds (ii) and (iii): Failure to Consider the Appellant's Case*

14. In light of my findings above the remaining two grounds can be shortly stated. The point made by Mr Behbahani is that the Tribunal has reduced the Appellant's case to the connection to Mr P. The reasoning in the determination is that if Mr P is alive and well and living unmolested in Iran, then so too would the Appellant if he returned there. This is not the sum total of the case. The authorities have, it would seem, concluded their investigations into Mr P. They have barely begun their investigations of the Appellant. It is his case that if returned to Iran on an emergency travel document the authorities would immediately be alerted to the fact that he had been in the UK for a long time, had overstayed his visa and had possibly claimed asylum. A cursory check would reveal that there was an outstanding investigation into his possession of materials considered politically sensitive. The Tribunal found [at §45] that these "wider aspects" of the claim simply fell away in light of its findings about Mr P. That is not adequate reasoning and does not address the case as put.

15. For these reasons I decided, in a decision dated the 17th August 2017, to set the decision of the First-tier Tribunal aside.

**The Re-made Decision**

16. The hearing was reconvened before me on the 16th October 2017. I heard oral evidence from the Appellant and submissions from the parties. I reserved my decision.

*The Appellant's Evidence*

17. The Appellant has set out his case in the following documents:

- Screening interview dated 24th April 2012
- Asylum Interview 2nd May 2012
- Witness statement dated 15th February 2013 (with samples of caricatures collected from internet)
- Witness statement 28th August 2013
- Witness statement dated 31st January 2014
- Witness statement dated 6th October 2017

18. I find that the account given has been consistent throughout these documents, and in the Appellant's oral explanation of events before me. The account is as summarised above at paragraph 3, but his interviews and statements have revealed additional detail. There have also been developments in the case since the appeal was heard by Judge Walker.

19. In his interview the Appellant explained that he has been interested in collecting cartoons since he was a child. He and his friends would exchange them, and they were concerned with a wide range of topics. He would for instance collect cartoons about footballers and other public figures – not just politicians or religious leaders. The reason that he downloaded them when he found ones he liked was because the internet in Iran can be very slow, and because it is monitored and filtered by the government. If he saw an image on a particular site he might not be able to see it again. By collecting them all in a file he could access them whenever he wanted. The Appellant estimates that by the time he handed the USB stick over to Mr P, he had amassed somewhere between 300-400 images, and about 70% of these were political. It was his father who had first mentioned the collection to Mr P, and he had asked the Appellant if he could see it. In respect of his personal documents the Appellant is unable to say why they remained in Mr P's office some ten months after Mr P had helped him with his visa application. When they raided his father's home they took away his personal computer - which significantly he had decorated in green - some posters/pictures of Mousavi and also some green bracelets that had been produced for the wearer to demonstrate support for the reform movement. They also confiscated the family satellite dish.

20. In respect of what has happened since the First-tier Tribunal hearing, the Appellant's latest statements recount information that he claims has been provided to him by his father. His father has told him that the authorities visited the family home on the 29th March 2014 he was asked to come in for questioning by the Etelaat – it having been made clear that if he did not come 'voluntarily' he would be arrested. He was again asked about the Appellant's whereabouts. Two officials from the Ministry of Intelligence made it clear that they knew that the Appellant was in the UK, and that he had claimed asylum. They also stated that they were aware that the Appellant's father was lying when he asserted that he had not heard from the Appellant. He was kept in the office for questioning for the entire today. He was intimidated and threatened and at one point was punched in the chest. He was required to sign an undertaking to the effect that if he found out where the Appellant was he was to inform the authorities immediately. Since that meeting the authorities have been back to speak with the Appellant's father on a further three occasions: on the 3rd March 2015, the 6th March 2016 and the 25th February 2017. In respect of the dates of these visits the Appellant agrees that they would appear to be annual. He states that he and his father have discussed the matter and speculate that possibly they have resulted from some sort of annual review of live cases, since they have

all fallen on the run up to the Iranian new year. On each occasion the visits have taken a similar form. The officers who conduct the visit inform the Appellant's father that they still wish to question his son, and they require him to reaffirm his undertaking; he in turn informs the officers that his son's whereabouts remain unknown to him.

21. The Appellant's final statement, dated 6th October 2017, refers to one other matter. That is his ongoing concern that some of the information in the possession of the Iranian authorities – as communicated to his father – came from the internet, more specifically from the un-anonymised decision of Upper Tribunal Judge Gleeson dated 2nd August 2013, which emerged as a 'hit' on a search of the Appellant's name up until it was amended, with an anonymity direction made, sometime in mid-2014. The Appellant notes the very specific information that the Etelaat had, namely that he had claimed asylum and was still in contact with his father; he postulates that the only way that they could have come by that information would have been from the Upper Tribunal decision.

*The Country Background Material*

22. Both parties ask me to have regard to the extant country guidance and reported decisions on Iran: AB and Ors (internet activity – state of evidence) Iran [2015] UKUT 00257 (IAC) and SSH and HR (illegal exit – failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC). I do so in my consideration of the claim.

23. Mr Behbahani further relied on a bundle of country background material which went generally to two matters: the view taken by the Iranian authorities to any kind of political opposition, and the likelihood of suspicion on their part being exacerbated if the target is from one of Iran's ethnic minorities. This latter point is raised because the Appellant is of Azeri ethnicity. For reasons that will become clear I need not refer in detail here to any of that material. Mr Behbahani's bundle did however address two other matters, specifically pertinent to this case.

24. At page 93 there is a report issued by the UNHCR in February 2012. It details how a number of bloggers and internet activists had been arrested in Iran and that some were facing severe penalty, for instance web technologist Mehdi Alizadeh who was sentenced to death in late January of that year for unspecified crimes against God. He was part of a group who were accused of hosting illegal online content. The pertinent part of the report confirms that in January 2012 Mr P was arrested. His newspaper was shut down and at the date of the UNHCR report remained blocked online. The report states that he was released after six days on a bail recognizance of $220,000. He faced charges of propagating against the regime; UNHCR's assessment was that this related to his decision to cover stories of activists being arrested.

25. The bundle further contained numerous reports from the relevant period of cartoonists being arrested and harassed, and of newspaper editors being punished for publishing such material where it was considered to be adverse to the interests of the Iranian state. For instance: in September 2012 the Financial Times reported that a daily newspaper in Iran was closed down after publishing a cartoon which allegedly insulted those who had fought against Iraq; in November 2012 another title was closed down and the editor arrested after it printed a cartoon featuring then president Ahmedinejad. More recently, in June 2016 two unnamed Iranians were arrested for publishing cartoons of regime officials online; this followed the arrest of a 15 year old who had tried to launch a channel on a social media site.

*Discussion and Findings*

26. I am required to assess whether the Appellant has a well-founded fear of persecution in Iran for reasons of his imputed political opinion. His case is that he remains under investigation for possession of 'subversive' images; he knows that the authorities have taken these images seriously because they have already resulted in his father being arrested and ill-treated; the passage of time, or the release of Mr P, do nothing to mitigate this fact, since the investigation remains live; according to SSH and HR the Appellant will be questioned on arrival in Tehran; it is his case that the outstanding investigation will come to light and he is reasonably likely to be transferred for further questioning with an attendant risk of serious harm.

27. I begin with the historical account as presented by the Appellant. I do so because Mr Behbahani accepts that if that is rejected, the appeal must fail, since the Appellant would be being returned as nothing more than a failed asylum seeker. I remind myself that the burden of proof is on the Appellant, and the standard of proof is relatively low. The Appellant needs to show it to be *reasonably likely* that what he says is true.

28. I find that the account given by the Appellant has been consistent in its telling over the past five years. I had an opportunity to hear the Appellant give oral evidence and found it to be wholly consistent with the evidence he had set out in the six written documents before me. I assume that if at any time the Appellant had otherwise deviated from his account, the Respondent would have brought this matter to my attention. The consistency in the account is a matter that weighs in the Appellant's favour when I assess its credibility.

29. I found nothing to be inherently implausible in the account. The Respondent questions why Mr P would have wanted the USB stick containing the cartoons. As UNHCR have reported, he is the editor of a newspaper who has been accused – impliedly - of anti-regime sentiments. He may have wanted the cartoons for his own consumption, or he may have wanted to consider publishing some of them. I cannot know. It does not however seem to me to

be inherently improbable that such a man would be interested in this material. The Respondent further considers it not credible that Mr P would have retained the Appellant's personal documents. She points out that the Appellant had got his visa some ten months prior to the alleged raid and there would therefore be no need for the documents to still be sitting in that office. That logic cannot be faulted, but I do not accept that this would render this account *inherently incredible*. I should imagine that lots of offices around the world contain documents or files which strictly speaking do not need to be there. It is not beyond credible to say that a busy newspaper editor might just not have got round to returning the items.

30. The account is supported by external objective evidence, viz the UNHCR report on the arrest of Mr P. The Respondent has repeatedly made the point that the Appellant could have read about this event, and constructed a story to fit around it. I have borne that it mind. It is indeed a possibility, however I also attach some weight to Mr Behbahani's point that the Appellant would have done rather better attaching himself to a more dramatic story, for instance the death sentence passed on Mehdi Alizadeh in the same month. To put it bluntly: if you are going to make something up, you would likely make up something better than a fleeting association with someone who was released after only 6 days detention. Overall I am struck by the distinct lack of exaggeration and embellishment in this account.

31. The account is consistent with the general country background material. The Appellant's bundle contains numerous examples, in particular from 2012, of young Iranians facing investigation into their possession, publication or production of cartoon images denigrating the Iranian leadership. This evidence supports the Appellant's case that although this might be a matter that appears trivial to us, it is a matter that would be taken very seriously indeed by the Tehran regime.

32. Having considered all of the Appellant's evidence in the round I am satisfied that he has discharged the burden of proof to the lower standard.

33. The Appellant did not leave Iran illegally, but he would be returned in a situation where it would be obvious to the Iranian authorities that his visa in the UK had expired. I accept, applying <u>SSH and HR</u> that he would be likely questioned in those circumstances and that he would have to divulge that he had been in the UK since 2011. A basic check would reveal the outstanding case against him. In her submissions Ms Pal questioned whether that would matter. She pointed out that the authorities appear to have lost interest in the case, given that Mr P himself was released back in 2012 and as far as we know has not been pursued since. I am not satisfied that the two cases are the same. First, the USB did not belong to Mr P, it belonged to the Appellant, a fact that he may well have stressed to the security services who interrogated him; any claim to that effect would have been corroborated by the seizure of the Appellant's PC, which contained the very same file as

found on the USB. Mr Behbahani stressed the pro-reform material seized in the same raid, and submitted that the Iranian authorities would likely be building a picture of the Appellant, precisely the profile that would likely result in enhanced questioning on arrival. He is an Azeri student overstayer who has claimed asylum, having spent a long time in the UK, having repeatedly refused to answer summons so that a warrant has been issued against him, and of whom there is evidence to suggest is an active supporter of the reform movement who passed banned images onto a newspaper editor. Mr Behbahani submitted that in those circumstances the Appellant would very likely be transferred for "further questioning, detention and potential ill-treatment" [para 23 SSH and HR]. I agree. Whether or not the case against the Appellant is likely to eventually lead to a conviction, I make no finding; I am however satisfied that it is reasonably likely that he will be subjected to serious harm in the course of the investigation, and for that reason he must succeed in his appeal.

**Decisions**

34. The decision of the First-tier Tribunal contains an error of law such that the decision must be set aside.

35. I re-make the decision in the appeal as follows:

"The appeal is allowed on protection grounds.

The appeal is allowed on human rights grounds"

36. There is a direction for anonymity.

Upper Tribunal Judge Bruce
19th October 2017