Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/09450/2014**

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 3 May 2017	**On 5 May 2017**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

HM
ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Schwenk (Counsel)
For the Respondent: Ms A McVeety (Senior Home Office Presenting Officer)

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original first Appellant in this determination identified as HM.

Introduction

1. I have anonymised the appellant's name because this decision refers to his international protection claim.

2. The appellant is a citizen of Iraq, of Qashqai ethnicity, who arrived in the United Kingdom on 4 February 2011, and made a claim for asylum that same day. The respondent refused the asylum claim and the appellant appealed to the First-tier Tribunal. In a decision dated 9 August 2011 First-tier Tribunal Judge Osbourne dismissed the appeal on asylum, humanitarian protection and human rights grounds. In so doing, Judge Osborne rejected aspects of the appellant's account, but accepted important parts of it, including activities against the authorities on behalf of the Qashqai and participation in a demonstration in 2009.

3. In 2013 the appellant made further representations, in which he relied upon his conversion to Christianity. The respondent treated this as a fresh claim but rejected it. The appellant appealed this and in a decision dated 20 April 2015, First-tier Tribunal Simpson dismissed his appeal on asylum and humanitarian protection grounds. In short, Judge Simpson did not believe that the appellant was a genuine convert to Christianity. In a decision dated 20 May 2016, Upper Tribunal Judge Southern found that there was no material error of law in Judge Simpson's finding that the appellant was not a genuine convert. Judge Southern however concluded that in rejecting the appellant's claim to be at risk as a failed asylum seeker who had made an illegal exit from Iran, Judge Simpson made an error of law, and he allowed the appeal to that limited extent. Both parties were directed to provide written submissions upon the promulgation of a new country guidance case on Iran.

4. On 29 June 2016 SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC) was promulgated. In compliance with directions, the appellant filed and served written submissions relying upon this decision and the positive findings of fact made by Judge Osbourne.

Hearing and issues in dispute

5. At the beginning of the hearing before me both representatives agreed that the appeal raised the following sole narrow issue: in light of the findings of fact made by Judge Osbourne and Judge Simpson, is it reasonably likely that as a result of questioning at the point of return in Iran, particular concerns arising from the appellant's activities are likely to arise, such that he is at risk of further questioning?

6. In SSH the Upper Tribunal accepted that this period of further questioning carried with it a real risk of detention and ill-treatment, and said this at [23]:

> "In our view the evidence does not establish that a failed asylum seeker who had left Iran illegally would be subjected on return to a period of detention or questioning such that there is a real risk of Article 3 ill-treatment. The evidence in our view shows no more than that they will be questioned, and that if there are any particular concerns arising from their previous activities either in Iran or in the United Kingdom or whichever country they are returned from, then there would be a risk of further questioning, detention and potential ill-treatment. In this regard, it is relevant to return to Dr Kakhki's evidence in re-examination where he said that the treatment they would receive would depend on their individual case. If they co-operated and accepted that they left illegally and claimed asylum abroad then there would be no reason for ill-treatment, and questioning would be for a fairly brief period. That seems to us to sum up the position well, and as a consequence we conclude that a person with no history other than that of being a failed asylum seeker who had exited illegally and who could be expected to tell the truth when questioned would not face a real risk of ill-treatment during the period of questioning at the airport."

7. Both representatives agreed that it followed from SSH that:

   (i) as an illegal departee from Iran, the appellant would be questioned at the point of return to Iran;
   (ii) the initial questioning would be for a "fairly brief period" (at [12] of SSH the Internal Organisation for Migration considered that in the context of voluntary returnees, questioning might take a few hours);
   (iii) if "particular concerns" arose from previous activities either in Iran or in the United Kingdom, then there would be the risk of further questioning accompanied by ill-treatment;
   (iv) the assessment of whether "particular concerns" are likely to arise turns upon all the individual factors, considered cumulatively;
   (v) the appellant would be expected to tell the truth when questioned;
   (vi) the evidence suggests no appetite to prosecute for illegal exit alone, but if there is another offence, illegal exit will be added on, the cases where illegal exitees were imprisoned show much more by way of specific activity, as opposed to simple imputation – see [31] of SSH;
   (vii) this appellant is a failed asylum seeker who exited Iran illegally but there are additional matters relevant to his history and profile, which require careful scrutiny in light of the country guidance;
   (viii) there is no need to hear any further evidence from the appellant, and the findings of fact made by Judge Osbourne and Simpson need to be applied to the country guidance.

8. Following this agreement by both representatives, the hearing proceeded by way of submissions only.

9. Mr McVeety invited me to find that the only notable information that would emerge during questioning would relate to the appellant's activities on behalf of the Qashqai and his attendance at a demonstration in 2009. He submitted that the appellant's Christian activities in the United Kingdom are now irrelevant, given Judge Simpson's findings. Mr McVeety submitted that the appellant's activities were so long ago and of such a low profile that after brief questioning, the appellant would be released and no "particular concerns" were reasonably likely to arise.

10. Mr Schwenk invited me to find that the Iranian authorities are reasonably likely to have "particular concerns" about this appellant when the following matters are considered cumulatively:

    (i) He has a known history of agitation on behalf of the Qashqai and came to the attention of the authorities in 2001/2 for this reason.
    (ii) He took part in the anti-regime 2009 demonstrations in Iran;
    (iii) Whilst in the United Kingdom for a lengthy period of over six years, he has participated in Christian activities and has Christian friends;
    (iv) He has a history of mental health difficulties and finds it challenging to give clear answers when questioned.

11. At the end of submissions, I reserved my decision, which I now provide with reasons.

Assessment of risk

12. I must apply the lower standard of proof when assessing whether the Iranian authorities will have "particular concerns" regarding the appellant. In SSH at [26] and [31], the country expert Dr Kakhki accepted there was a difference between people who were activists or protestors on the one hand and people on the other hand, such as the appellants in those cases, with no history save that they were failed asylum seekers who departed Iran illegally. Although there was agreement that the appellant is not in the latter "no history" category of returnee, the parties disagreed on the likely approach of the authorities to the appellant's history. That assessment involves nuanced analysis. There is little specific guidance available on the nature, level and timing of activities likely to give rise to "particular concerns".

13. It is important that the assessment takes place in the context of what is known about the behaviour of the Iranian authorities more generally. That is summarised in AB and Others (internet activity – state of evidence) Iran [2015] UKUT 0257 (IAC) in the following way:

> "331. The US Department of State Report refers to the crackdown on civil society intensifying after the 2009 elections. There are reports of disappearances, cruel inhuman and degrading punishments, judicially sanctioned amputation and flogging, beatings and rape and other harshness. Although some prison facilities including Evin prison in Tehran, are notorious. There was evidence of there being unofficial secret prisons where abuse occurred and prison conditions generally being harsh and life-threatening. The point is made that although there are reassuring constitutional provisions in practice the authorities can and do detain people incommunicado, sometimes for weeks or even months, without trial or contact with their families. The "offences" attract attention are often vague by western standards and include such nebulous activity as "antirevolutionary behaviour", "moral corruption" and "siding with global arrogance". The point is that offences of this kind make it difficult to predict with any degree of accuracy just what kind of behaviour is going to attract adverse attention."

14. In AB the following caution was given:

> "456. The fact that people who do not seem to be of any interest to the authorities have no trouble on return is not really significant. Although Iran might be described as exceedingly touchy there is no reason to assume that the state persecutes everyone and the mere fact of being in the United Kingdom for a prolonged period does not lead to persecution. It may lead to scrutiny and this is what concerns us most."

15. I now turn to each of the individual risk factors identified by Mr Schwenk.

Anti-regime activities in Iran

16. Mr McVeety agreed that the appellant had taken part in anti-regime activities on behalf of the Qashqai in 2001/2, as summarised by Judge Osbourne at [15] and [16] of her decision, and accepted by her at [51]. This included the appellant being taken to the Sepah offices, where he was warned and beaten. Mr McVeety also acknowledged that Judge Osbourne accepted at [52] that "*someone of the appellant's political sensitivity*" may well have attended the 2009 demonstration against the election result, and was shot and hospitalised as claimed.

17. Mr McVeety however invited me to find that these events took place a long time ago and the authorities would no longer be interested in these historical matters. I also note that Judge Osbourne found at [55] that the appellant was not interrogated about his Qashqai activities in 2009, and rejected his account of continuing interest, as a result of his participation in the demonstration.

18. It is important to note, as the Upper Tribunal did in SSH at [31] that the examples of illegal departees who were imprisoned showed "*much more by way of specific activity than a simple imputation*". When assessing the appellant's history I bear in mind that the specific anti-regime activities he has been involved in took place a long time ago, and he has not taken part in any related activities whilst in the United Kingdom.

19. In my judgment, it is reasonably likely that upon initial questioning, the appellant's past anti-regime activities will become known. As pointed out in AB, the Iranian authorities remain concerned about nebulous activity such as "antirevolutionary behaviour", "moral corruption" and "siding with global arrogance" and it is difficult to predict with any degree of accuracy just what kind of behaviour is going to attract adverse attention. The appellant's history of anti-regime activities, even though it is restricted to two occasions a considerable time ago, together with the length of time the appellant has been away from Iran in the United Kingdom, is reasonably likely to elicit suspicion and further questioning. I do not accept Mr McVeety's submission that the authorities will not regard his history adversely and with suspicion. When considered together, the activities mark the appellant as a person who has taken part in, what might be considered in the context of Iran, not insignificant anti-regime activity, albeit in the past.

Christian activities in the United Kingdom

20. Mr McVeety asked me to note that the appellant has lied about his Christian beliefs and that when questioned in Iran about his activities in the United Kingdom he would not disclose anything to do with his Christian activities because they are all based upon a lie. The difficulty with this submission is that Mr McVeety did not dispute that Judge Simpson accepted at [35] the evidence that the appellant attended a weekly Christian meeting, the Living Waters Christian Fellowship, with a small group of people. She described this as a social activity and not necessarily a religious one. Judge Simpson acknowledged that the appellant had developed some private life, "*particularly based on his weekly attendance at the Living Waters Christian Fellowship*" at [43].

21. The assessment of risk when questioned is predicated upon the appellant telling the truth. The 'truth' as identified by Judge Simpson is that the appellant has attended weekly meetings linked to a Christian group and has friends closely committed to Christianity. When asked straightforward questions such as: 'What did you do in the UK? What friends did you associate with? Did you attend any meetings?', the appellant is reasonably likely to truthfully answer in accordance with Judge Simpson's findings. This is reasonably likely to lead the authorities to view him with increased adverse interest.

Behaviour at interview

22. Mr McVeety acknowledged that the appellant has had "*clear mental health issues*". Judge Simpson referred to the appellant having been 'sectioned' at [33]. The representatives agreed that this referred to a period between September 2011 and March 2012 when the appellant was detained under the Mental Health Acts. Mr McVeety did not dispute Judge Osbourne's summary of the difficulties encountered by the appellant in answering questions at interviews at [45] of her decision:

> "He appears to be unable to answer simple questions which are put without launching into explanations which are not requested and when attempts are made to bring him back to the point he becomes agitated and insistent about justifying his responses. This is evidenced in the unusually lengthy screening interview which I find was caused by the appellant's convoluted answers with regard to the change of agent in Italy. When the Secretary of State's representative commenced the substantive asylum interview it was eventually suspended due to the behaviour of the appellant …"

23. The appellant's own representative described him as "*pendantic and verbose*" and Judge Osbourne accepted the Respondent's submission that he was "*convoluted and evasive*".

24. In my judgment the appellant's past behaviour at interviews and when giving evidence, demonstrates a real risk that upon being interviewed initially on arrival in Iran, the appellant will be agitated and/or insistent and/or convoluted and/or evasive. When this is placed alongside the appellant's history of activities in the United Kingdom and Iran, it is reasonably likely to prompt "particular concerns" justifying a further period of questioning.

Conclusion

25. When all the evidence is considered in the round and cumulatively, it is reasonably likely that the Iranian authorities will have "particular concerns" regarding the appellant's activities and profile.

26. In Iran nebulous activity such as "anti-revolutionary behaviour" and "siding with global arrogance" are viewed as "offences" and worthy of adverse attention. The appellant's past anti-regime activities in Iran, his links to Christian-based activities and friends in the United Kingdom and his likely behaviour when interviewed must be considered together. When they are, it is reasonably likely that the Iranian authorities will be suspicious about the appellant's behaviour, associations and views. It is reasonably likely that they shall consider further questioning necessary, in order to elicit more details

and/or clarification regarding the appellant's activities in Iran and/or the United Kingdom and his current political and/or religious outlook and/or activities.

27. Mr McVeety accepted, consistent with SSH, that a further period of questioning is reasonably likely to be accompanied by detention and ill-treatment. This serious harm shall be for reasons relating to an imputed anti-regime political opinion.

28. It follows that the appellant has a well-founded fear of persecution for reasons relating to his imputed political opinion.

Decision

29. The appeal is allowed on asylum grounds and under Articles 2 and 3 of the ECHR.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
4 May 2017