Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/13354/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25 July 2017	**On 4 August 2017**

Before

UPPER TRIBUNAL JUDGE WARR

Between

M M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Harris of Counsel instructed by Elder Rahimi Solicitors (London)
For the Respondent: Mr Peter Armstrong, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Iran born in 1974, appeals the determination of First-tier Judge Trevaskis promulgated on 17 January 2017 to dismiss her appeal against the decision of the respondent to refuse her application for asylum on 11 July 2014. The procedural history, however, is somewhat complex. The appeal originally came before Judge Trevaskis on 29 June 2016. The judge heard oral evidence from the appellant and summarised her claim and his conclusions upon it in the following extract from his determination:

"47. The Appellant's claim is that she fled from Iran with her ex-husband because she feared arrest, prosecution and punishment amounting to persecution for alleged adultery; since coming to the United Kingdom, she claims that she has renounced her Muslim faith, and converted to Christianity; she also claims that, before leaving Iran, she was subjected to an attack of such violence that she was forced to undergo reconstructive facial surgery.

48. The evaluation of her claims turns upon the credibility of those claims. The respondent considers that the inconsistencies between the accounts given in her screening interview and asylum interview undermine the credibility. The appellant has dealt with those discrepancies, claiming that the interpreters used were inaccurate. It is also suggested that the screening interview, which took place on Christmas Day, was rushed. I have considered the written record of that interview, and I have noted that many of the answers are very full, and this leads me to believe that the interview was conducted at a proper pace. There has been no evidence presented to substantiate the accusation of that the interview was rushed.

49. The appellant claims that details which were omitted from her screening interview were omitted because she was told to give short answers. The introductory notes state that she will not be asked to go into detail about the substantive details of her asylum claim as, if appropriate, this will be done at a later interview. However, some details she will be asked to provide may be relevant to her claim. She confirmed that she understood this. While that may explain the omission of certain details, it does not explain actual discrepancies in details given in the two interviews, and I do not accept that she has explained those discrepancies in this way.

50. The appellant claimed to have received a total of 80 lashes for having tattoos; there has been no medical evidence to support this, following examination of scarring. With regard to her facial surgery, again there has been no medical evidence, either from Iran or from the United Kingdom, to verify the extent of the surgery, and the reasons for it. She has no scars on her face which would be consistent with being beaten to the extent claimed, causing loss of consciousness and the need for surgery to rebuild her nose. An alternative reason for the apparent surgery suggested to her by the respondent's representative was that of cosmetic enhancement, albeit no wholly successful. She has denied this, but accepts that she is from a westernised Iranian family, and she claims to have enjoyed a liberal lifestyle, not approved by traditional Islamic families. This background tends to lend some support for the suggestion that she may have

undergone elective cosmetic surgery, rather than suffering the physical assault that she claimed.

51. Having travelled to the United Kingdom with her partner, and making her asylum claim immediately on arrival, it is unclear why she has not been able to provide evidence from him to corroborate her claims. At that time, they were apparently in a continuing relationship, and I do not understand why he was not asked to support her claim, as he was apparently named as her dependent. Whatever happened to their relationship later, I find the lack of his supporting account undermines the credibility of her claims.

52. She claimed that she had to seek protection from domestic violence by her partner, but no evidence has been produced of any report of such violence, other than a letter repeating her account, or of any police investigation. Indeed, this claim was not argued before me, and I assume that it has been abandoned; that suggests to me that its credibility is not established.

53. The appellant has produced no documentary evidence to substantiate her claim to be the subject of an arrest warrant in Iran. She has been able to obtain a document which she claims is evidence of her divorce, and I therefore expect that she would have been able to obtain the arrest warrant by similar means. The failure to produce that document undermines the credibility of her claim that such a document exists.

54. I do not find credible the claim by the appellant that she is at risk of persecution in Iran by reason of being accused of adultery.

55. I have considered her claim to have converted to Christianity. Such claims, when considered by the tribunal, are usually supported by more evidence than in the present case; indeed, it has been previously decided that, where there is no supporting evidence from a pastor or similar official of the claimed church, that is often fatal to the credibility of such a claim. In the present case, there is very little evidence from the appellant regarding this claim; because it was not made as part of her initial asylum claim, it has not been tested by the respondent in the usual way. The document produced as evidence of baptism is in the nature of a pro forma, stating that she attended regularly for worship and Bible studies between August and November 2015, but undertook no other ministries, apart from one to one evangelism, and that her activity in church life had been restricted through having a young child and being moved to Swindon. In the absence of further evidence, I am not prepared to accept this document, and the very limited evidence of the appellant, as satisfying me to the required standard that she has converted to Christianity.

56. For all these reasons, I do not find the claims by the appellant to be credible. I do not find that she has established that she faces a real risk of persecution in Iran for a Convention reason."

2. The judge then considered the issue of risks on return in the light of **SB (risk on return – illegal exist) Iran CG [2009] UKAIT 00053** and concluded that she would not be at risk and there were no insurmountable obstacles to her integration in Iran where her family resided. Her son's best interests would be met by staying with her and returning to Iran where his maternal family was located. The appeal was dismissed on all grounds. An appeal was launched and the matter came before Deputy Upper Tribunal Judge IAM Murray on 9 November 2016. The judge identified no errors in the judge's findings about the appellant's conversion to Christianity and the challenge to the credibility findings were unarguable and accordingly the credibility findings must stand. However it had been acknowledged by the Presenting Officer at the hearing that the judge had not made a finding about whether the appellant was divorced or not and whether she had a child born out of wedlock and if she had what the consequences of this were. The Presenting Officer suggested that the claim could be returned to Judge Trevaskis to make a decision on these matters but that the other findings should stand. Judge Murray accepted this suggestion and referred the matter back to Judge Trevaskis "for finding to be made upon these matters and based on these findings he may leave the decision as it presently stands or overturn the decision based on these new findings". The judge in obedience to these directions made the following additional findings of fact under the heading "risk on return" on pages 10 and 11 of his decision as follows:

"57. Pursuant to an appeal to the Upper Tribunal against my decision promulgated on 12 July 2016, this matter was remitted to me to make findings as to whether the appellant is divorced and, if so, whether she has a child born out of wedlock, and the resulting risk to her and the child on return to Iran.

58. The appellant produced as evidence of her claim to divorce a document, with certified translation, which she claimed to be her original divorce certificate. The respondent did not accept the document as evidence of divorce, because it refers to proceedings as "Khula-first round"; a footnote to the translation describes this as a divorce initiated by the wife, yet it goes on to describe the divorcing party as the husband, and the appellant is described as the divorced party. The document translation makes no reference to the term "Talaq", which denotes a finalised divorce.

59. The appellant stated that neither she nor her husband wanted to be divorced, and only did so under duress; they have since resumed cohabitation; this evidence leads me to conclude that they decided to produce evidence to persuade others that they

were divorced, but did not in fact undergo a legally effective divorce. As noted above, the appellant did not recall evidence from her husband about this or any other aspect of her claim.

60. I am therefore not satisfied to the required standard that the appellant was legally divorced.

61. It follows from this finding that her child … was not born out of wedlock. I am therefore not satisfied to the required standard that, if the appellant and her child are returned to Iran, they will be at risk of adverse treatment by reason of the appellant having given birth to her child out of wedlock.

62. According to **SB (risk on return – illegal exit) Iran CG [2009] UKAIT 00053** 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. Illegal exit may however add to the difficulties an applicant would face if they had attracted the adverse attention of the authorities for another reason. In this case, I have found there is no evidence that the appellant has attracted such adverse attention. I have found that her claims for asylum lack credibility for the reasons stated above, and therefore I have concluded that she is not at risk on return, either for the reasons which she gave in support of her asylum claim, or as an Iranian who left the country illegally."

3. Permission to appeal against the decision was refused by the First-tier Tribunal. It was noted that reliance appeared to be placed on a translated certificate submitted after the hearing before the First-tier Judge. It was not considered that the remaining grounds were arguable.

4. Permission to appeal was granted by the Upper Tribunal on 5 June 2017. It was arguable that the evidence of divorce was irrational and insufficiently reasoned in the context of the documents and the evidence of abuse within the appellant's marriage and that there had been a perverse finding that the appellant should have called her ex-husband to confirm the divorce when he had left the UK. The First-tier Tribunal had erred in failing to consider the risk on return as a woman with a child born out of wedlock. A response was filed on 27 June 2017 where the respondent noted that the judge had not accepted any of the appellant's claims which were the basis for the asylum claim. The appellant had not been accepted to be divorced as she claimed and therefore there would be no need for an assessment of risk for a child born out of wedlock given that the judge had not accepted that the relationship had deteriorated. The judge's comments with regard to the ex-husband related to the period when the appellant first entered the UK when there was no alleged animosity between them – reference was made to paragraph 51 of the determination. The judge could not be found to have been in error because of evidence presented after the hearing. The judge had assessed the divorce certificate in paragraphs 58 to 60 of his decision and in any event the burden was upon the appellant

to show that according to the laws in Iran she was in fact properly divorced: **CS and Others (proof of foreign law) India [2017] UKUT 00199**.

5. For the appellant it was argued that the comment in paragraph 59 that the appellant did not call evidence from her husband did not take into account the finding made in paragraph 25 of the decision that the appellant's husband had fled back to Iran and she had not heard from him since. This was a short point but the key significant point in the case. The divorce had been finalised in September 2013 as stated in paragraph 24 of the decision and she and her husband had fled to the UK and their son had been born in March 2015. Her husband had been frustrated by living as an asylum seeker and wished to return to Iran and she had had to seek help as a victim of domestic abuse whereupon her husband had returned to Iran. Mr Armstrong submitted that the determination was well reasoned and the judge had considered all the evidence. The grounds were no more than a disagreement with the findings. The judge had not accepted any aspect of the appellant's asylum claim. The appellant was not divorced and not at risk. The judge had referred in paragraph 51 of his decision to the period when she and her husband had come to the United Kingdom and she had claimed asylum on arrival. At that point the judge had found that it was unclear why she had not been able to provide evidence from him to corroborate her claims. At that time they had apparently been in a continuing relationship.

6. Reliance had been placed on fresh evidence provided after the hearing. An expert's report was required to prove foreign law – see paragraph 16 of **CS (India)**. No expert report had been tendered to indicate why the documents exhibited at pages G2-G12 should be accepted as evidence of divorce. There was nothing to support the complaint in paragraph 58 about the judge's findings in relation to the term "talaq". The appellant would not be perceived as having a child born out of wedlock as the judge found. The judge had identified major discrepancies in the appellant's account. The appellant's husband had returned to Iran because he did not enjoy life in the United Kingdom. The judge had found no evidence about domestic violence in paragraph 52 of his determination. The judge was entitled to comment as he did about the appellant's ability to obtain a divorce document but not an arrest warrant. There was no material error of law in the decision.

7. Counsel submitted that the appellant had said at interview that the warrant had been shown to her mother. She had said at interview that she had been hit. There had been a letter from an independent domestic violence advocate dated 27 October 2015 at pages D1 to D2 of the bundle. It was not clear from paragraph 59 whether the judge was referring back to paragraph 51 or not. Talking about resuming cohabitation was a blatant factual error.

8. At the conclusion of the submissions I reserved my decision. I have carefully considered all the material before me. I remind myself that I can

only interfere with the decision of Judge Trevaskis if it was materially flawed in law.

9. In this context it is important to recall that the negative credibility assessment made by Judge Trevaskis following the hearing on 29 June 2016 were not impugned in any way by Judge Murray. The credibility challenges were on the contrary unarguable and the credibility assessment "must stand". The sole point on which the case was remitted was the issue of whether the judge believed the appellant was divorced and if she was what her risk on return to Iran would be with a child born out of wedlock and what the child's position would be if returned. In this context it is worth noting that a challenge had been mounted to what the judge said in paragraph 9 of his decision:

> "After she was married, he threatened to have her arrested for adultery; she and her husband agreed to divorce, which took place on 23 September 2013; they maintained a relationship, and she became pregnant."

10. Judge Murray did not consider that paragraph 9 of the decision went to the core of the claim and added:

> "I find that the judge has understood the sequence of events and the relevant points in issue. The wording of this paragraph is poor."

11. It is not a case in which Judge Trevaskis was invited to revisit his credibility findings. They were to stand. He assessed the documentation and the position of the appellant on return in the light of those findings. I do not find that the judge in paragraph 59 erred in referring to his previous findings and in particular what he said at paragraph 51. The grounds raised the issue of domestic violence but as is pointed out by Mr Armstrong this was dealt with in paragraph 52 of the decision. The judge noted that the appellant had produced a document which was claimed to be the original divorce certificate. He was not satisfied with what was said in the document and as Mr Armstrong points out the appellant had not provided an expert report in support of her case. The post-decision material does not identify any material error on the part of the judge. In short the complaints made are mere expressions of disagreement with the judge's findings. On the judge's analysis the child was not born out of wedlock and would not be subject to adverse treatment on return. The child's best interests had been taken into account in paragraph 65 of the decision.

12. In revisiting his decision the judge dealt with the issues on which the appeal had been remitted. I find no material error of law in the judge's approach to the matters he had been directed to assess.

13. The appeal against the decision of Judge Trevaskis is dismissed and his decision stands.

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.

TO THE RESPONDENT
FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed Date 3 August 2017

G Warr, Judge of the Upper Tribunal