



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: PA/14264/2016

THE IMMIGRATION ACTS

Heard at: Field House
On: 6 July 2017

Decision and Reasons Promulgated
On: 14 July 2017

Before

Deputy Upper Tribunal Judge Mailer

Between

MS A M
ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr K Gayle, counsel, instructed by Elder Rahimi Solicitors
For the Respondent: Mr P Singh, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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.
2. The appellant is a national of Iran, born on [] 1947. She appeals with permission against the decision of the First-tier Tribunal promulgated on 24 April 2017

dismissing her appeal on asylum, humanitarian protection and human rights grounds.

3. In granting permission to appeal, First-tier Tribunal Judge Parkes stated that the situation of the appellant being returned is one that that the Judge did not give much consideration to and so this matter justified further consideration.
4. Mr Gayle, who did not represent the appellant before the First-tier Tribunal, referred to the background summary set out by the Judge. The appellant had been in a public place at the Iran airport with a visa photograph in her passport showing that she was not wearing a full chador or burka or headdress. The Islamic State required her head to be covered in public.
5. She was interrogated at the time but was eventually allowed to travel after she lied about the whereabouts of her children. Her three children reside in the UK and all three have refugee status.
6. The Judge noted at [13], that a person linked closely to known anti-state individuals '...is more at risk of investigation themselves'.
7. At [20] the Judge noted that the appellant lived in Iran without persecution all her life. The fact that her children were involved in anti-regime activities so that they were at risk does not mean that their mother was involved, nor does it mean that she would be seen as being involved. Their involvement when they lived in Iran did not involve her, and the regime had shown that to be the case in that they had left her alone. Even when she was confronted at the airport with a picture of her which did not accord with their view taken by the Revolutionary Court, the regime did not arrest her but let her go on her way.
8. He found that it was implausible that a summons was issued against her some five months later. She has not produced the summons. Nor had she taken reasonable steps to effect production when she said that it is in existence [23].
9. Mr Gayle referred to the decision of the Upper Tribunal in SSH and HR (Illegal Exit: Failed Asylum Seekers) Iran CG [2016] UKUT 00308. At [23] the Tribunal held that in their view, the evidence did 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 their view showed no more than that they will be questioned, and that if there are any particular concerns arising from their previous activities in Iran, or in the UK, then there would be a risk of further questioning, detention and potential ill treatment.
10. The Tribunal held 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.

11. He submitted that the appellant is a 69 year old woman. She would be returning to Iran as an undocumented, failed asylum seeker. Her passport had expired. She would therefore be questioned by the Iranian authorities. She could not lie as to who she was or what she had done.
12. It is likely that they will ask her about her activities in the UK. The authorities would already be suspicious about those coming from the West.
13. Mr Gayle referred to the US Department of State report dated 2015 at A3 which catalogues the regime's arbitrary or unlawful deprivation of life, torture or other cruel and inhuman or degrading treatment or punishment.
14. The appellant gave false names for her children. He submitted that the Judge erred in finding at paragraph [20] that as the appellant was not targeted on account of her children's anti-regime activities in the past she would not be targeted in the future. There was a failure to consider the different circumstances arising from the fact that the appellant herself had come to the attention of the authorities. On return she would be detained and interrogated with the risk of harm. Even if she had not been of interest to the authorities prior to her departure from Iran, the situation on return would be fundamentally different.
15. Mr Singh sought initially to rely on the Rule 24 response, namely, that the appellant did not have problems in Iran and that intelligence services in Iran are sophisticated. He acknowledged however that the the risk was that the appellant would now be associated with her children, who have refugee status in the UK. She would be returning as a failed asylum seeker herself. Accordingly, her profile is different from the person simply returning to Iran who had left the country unlawfully. She had given false names of her children. She is accordingly linked to her own children who are perceived to be anti State individuals. She would therefore arguably be more at risk of investigation herself.

Assessment

1. The First-tier Tribunal Judge found at [21] that when the appellant told the authorities a lie about the identity of her children, '....they would not be fobbed off by her answers with false identities. They would know that her answers were not truthful or would at least have made further inquiries....'.. He did not accept that they would have let her go from Iran to three children whom she claimed the regime viewed as anti-regime. That would be a step too far for the staff to risk [22].
2. Mr Singh accepted that the Judge had made 'assumptions' that an investigation would have taken place prior to her leaving Iran. That however had not been substantiated by any evidence. That assumption coloured the Judge's subsequent finding that it is implausible that a summons had been issued some five months later [23].
3. I accordingly accept Mr Gayle's submission that the Judge did not properly take into account the position of the appellant, who would be returning without a

passport and who would be revealed to be closely linked to her three children who were refugees in the UK. The appellant would be expected to tell the truth when questioned. In the circumstances the Judge ought to have considered whether she would face a real risk during the period of questioning, of detention and potential ill treatment.

4. Both parties submitted that in the circumstances, the decision of the First-tier Tribunal Judge should be set aside and remitted to the First-tier tribunal for a fresh decision to be remade.
5. Having regard to the foregoing, I find that the decision of the First-tier Tribunal Judge contained material errors of law. I accordingly set aside the decision.
6. I have had regard to the President's practice statement as to remitting an appeal to the First-tier Tribunal for a fresh decision. I am satisfied that the effect of the error has been to deprive the appellant of her case being properly considered by the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside.

The case is remitted to the First-tier Tribunal (Hatton Cross) for a fresh decision to be made before another Judge.

Anonymity direction continued.

Signed

Date 13 July 2017

Deputy Upper Tribunal Judge C R Mailer