Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13597/2017

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 24 January 2019	**On 01 March 2019**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

AF
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C Grubb instructed by Qualified Legal Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

Introduction

2. The appellant is a citizen of Iran who was born on 21 September 1977. He entered the United Kingdom on 12 December 2007 and claimed asylum. That claim was refused on 23 December 2011. He did not appeal.

3. On 13 July 2016, the appellant was convicted at the Cardiff Crown Court of the offence of possessing with intent to supply a controlled drug of Class B, namely cannabis. On 8 August 2016 he was sentenced to twelve months' imprisonment.

4. As a result of that conviction, the appellant was notified on 12 August 2016 that the respondent intended to deport him pursuant to the automatic deportation provisions in the UK Borders Act 2007.

5. On 31 March 2017, further representations were made on behalf of the appellant seeking to resist his deportation including the impact upon him of deportation to Iran as he had been diagnosed with HIV.

6. On 5 December 2017, the appellant's human rights claim was refused and on that date a deportation order was made against him.

The Appeal

7. The appellant appealed to the First-tier Tribunal. In a determination sent on 19 April 2018, Judge N J Osborne dismissed the appellant's appeal on all grounds. He rejected the appellant's account that he would be at risk on return to Iran because of his political activities. Further, he dismissed the appellant's claim to be at risk as a result of his conviction for a drug offence in the UK. Finally, the judge rejected the appellant's reliance upon Arts 3 and 8 of the ECHR, including on the basis that he would lack available treatment on return to Iran.

8. The appellant appealed to the Upper Tribunal. That appeal was listed before me on 27 November 2018. At that hearing, no challenge was made to the judge's decision to dismiss the appellant's asylum claim based upon his political activities. Likewise, no challenge was brought to the judge's decision to dismiss the appellant's appeal under Arts 3 and 8 of the ECHR.

9. Instead, the appellant relied solely on the ground that the judge had failed properly to consider the risk to him on return to Iran from the Iranian authorities based upon his claim that they would investigate, detain and seriously ill-treat him because of his drugs conviction in the UK in order to ascertain whether his drug dealings had any connection with Iran and whether he would be guilty of an offence under Art 4 of the Iranian Penal Code.

10. In that regard, the appellant relied principally upon an expert report prepared by a well-known expert, Dr Kakhki.

11. In my decision sent on 13 December 2018, I concluded that the judge had failed properly to consider Dr Kakhki's report dealing with the risk to the appellant on return as a result of his drugs conviction in the UK.

12. As a consequence, I set aside the First-tier Tribunal's decision. The judge's findings and conclusions that had not been challenged stood. However, the appeal would be re-listed for a further hearing in order for this Tribunal to remake the decision in respect of the risk, if any, to the appellant on return to Iran as a result of his conviction for a drugs offence in the UK.

13. That appeal was relisted on 24 January 2019 before me. At that hearing, the appellant was represented by Ms C Grubb and the respondent by Mrs H Aboni.

The Issues

14. The appellant's case may be summarised as follows. First, he has a conviction in the UK for drug dealing, namely the supply of Class B drugs. That conviction, and its context, was reported in a "Walesonline.co.uk." news report. Secondly, as a result the appellant's conviction will become known to the Iranian authorities. Thirdly, the circumstances of his drugs offence will be investigated in Iran by the authorities on his return under the so – called principle of "universal jurisdiction" found in Art.4 of the Iranian Penal Code as to whether his offending amounted to an offence within Iran as part of a "wider drug smuggling network" from Iran. Fourthly, and as a consequence, the appellant is at risk of being detained in order to carry out that investigation which, even if it does not lead to any prosecution because his offending has no connection with Iran, he is at risk of serious ill-treatment including torture during the investigation process by the Iranian authorities and is at risk of being ill-treated by the non-availability (or deliberate withholding of) necessary drugs to deal with his HIV infection whilst being detained.

15. In support of the appellant's claim, Ms Grubb relied upon the expert report of Dr Kakhki and submitted that each step in the appellant's case is established factually and that, therefore, he is at serious risk of ill-treatment amounting to persecution entitling him to refugee status or serious harm entitling him to humanitarian protection under para 339C(iii) read with para 339CA of the Immigration Rules (HC 395) or which would be contrary to Art 3 of the ECHR.

16. In addition to Dr Kakhki's report, Ms Grubb relied upon a number of background documents contained in the appellant's bundle, in particular the "Special Rapporteur's March 2013 report on the situation of human rights in Iran" (13 March 2013) at pages 50 – 75, in particular at pages 56 and 57; and the Freedom from Torture (UK), "Turning a blind eye: why the international community must no longer ignore torture in Iran" (9 December 2017) at pages 234 – 262, especially at page 250; and the Mianeh (Institute for War and Peace Reporting), "HIV/AIDS – more than a social taboo" (26 February 2009) at pages 231 – 232.

17. Mrs Aboni accepted that, as Judge Osborne decided, that the Iranian authorities would investigate the appellant under that country's "universal jurisdiction" in relation to drugs offences. She also accepted, in her submissions, that the Iranian authorities may find out about his offence. However, Ms Aboni submitted that it had not been established, either by reference to the expert's report or the background material, that the appellant would face conditions of sufficient severity to require international protection. She accepted that the background evidence showed that present conditions in Iran were "harsh" but it had not been established the extent of time for which he would be detained, how prolonged the interrogation would be or what techniques would be used. She accepted that there would be some questioning but not that it would be of a sufficient length or intensity to reach the Art 3 threshold. She relied upon the fact that the appellant's drugs offence was that of a street level offender who had been caught in possession of 60 wraps of cannabis. That is all that would be disclosed by the online news report which was not such that he could be said to have played a significant part in a wider drugs operation.

18. In response to an enquiry from me, Mrs Aboni was not in a position to indicate what, if anything, the UK authorities would disclose to the Iranian authorities when deporting the appellant. She indicated that she was not aware of any evidence that the British authorities did confirm the details of a deported offender's convictions.

Discussion and Findings

19. The crucial section in Dr Kakhki's report which is relied upon is found at pages 205 – 206 of the bundle. It deals with the Iranian authorities' interest in returning drugs offenders and (specifically) their interest in the appellant as a result of the Wales online publication and the impact upon them (and the appellant) if detained. His report is in the following terms:

> "In the case at hand, it is not clear from the background material provided that whether there was a connection between the drugs found in [the appellant's] possession and his country of origin, Iran: i.e. whether Iran was the source or transfer point for those drugs to the UK. As mentioned, Article 4 of the Iranian Penal Code stipulates that, "if a part of a crime occurs in Iran, but it is completed outside of the country or part of the crim is committed abroad and the consequences are observed in Iran, it is considered as a crime committed inside Iran." Therefore, as [the appellant] drug dealing may have been connected to Iran it is possible that his crime would be investigated again by the Iranian authorities to establish whether he is guilty of an offence of a different nature to that for which he was convicted in the UK. This is particularly the case is it is apparent from the background information that [the appellant's] status in the UK has been discussed with the Iranian authorities and a passport has been issued in order to facilitate his removal (comments on CPP control case – 23/12/16). In my opinion this would be likely to result in further investigation in Iran if he is returned. Crimes such as the possession and distribution of illicit substances in the UK may be relevant to the Iranian authorities when establishing whether [the appellant] is part of a wide drug smuggling

network involving the transfer or export of illegal drugs from Iran. In any event, [the appellant's] criminal conviction is a matter of public record in the UK, and easily accessible by the Iranian authorities who gather information about Iranian citizens through the use of internet sources:

> **Asylum seeker jailed after being caught trying to sell cannabis to young people**
>
> A drug-dealing asylum seeker who said he had to flee Iran after speaking out against the government has been jailed for trying to sell cannabis on the streets of Cardiff.
>
> [The appellant] left Iran in 2007 and was taken to a refugee centre in Cardiff after arriving in the UK.
>
> But a judge told him his crime – which came about after he began using drugs himself – had "done a real disservice" to other potential asylum seekers hoping to come to this country.
>
> Referring to his move to the UK, defence barrister Sebastian Winnett told the court: "The regime was after him. He attended protests and was a vocal voice against the government there."…
>
> … Sentencing, Judge Rhys Rowlands told the 38-year-old, who was convicted last month of possession with intent to supply a class B drug, that he was a "street-level drug dealer" who had targeted young people in the centre of Cardiff late at night.
>
> "Having been allowed to remain [in the UK] you behaved illegally." The judge added. "In doing so you have done a real disservice to others who seek a future on these shores."
>
> He was given a 12-month prison sentence. The drugs which were found in his possession have been ordered to be destroyed.
>
> [The appellant] who worked as a cab driver in Iran, saw his refugee status expire in January this year, and his application to renew it will be determined now he has been sentenced.

Such negative coverage would certainly, in my view, draw the attention of the Iranian security forces who would investigate [the appellant's] possible criminal connections in Iran if he is returned. The effect of such an investigation would be prolonged detention in poor conditions, with denial of medical care, which may result in the deterioration of his health condition, as detailed in section one of this report."

20. Turning to "section one" of the report referred to by Dr Kakhki in the final paragraph and, in particular those parts relied upon by Ms Grubb, Dr Kakhki deals both with the ill-treatment of detainees and the particular position of those suffering from HIV.

21. As regards the former, Dr Kakhki says this at pages 192-193:

> "With regard to the general use of torture and in order to form a holistic understanding of the use of physical pressure within the investigative process, it is necessary to review the Iranian security services' rationale and goals behind using such methods. The most prevalent rationale for the use of torture is the acquisition of information, yielding either self-incriminating details or those that would incriminate the subject's accomplices. The latter

information could subsequently be used for investigations into the accomplices' crimes, using the same methods.

In addition to procuring general information about the detainee's activities, the routine use of torture is oftentimes intended to procure written and even televised confessions. Records of such confessions are then admissible within court proceedings as evidence of the subject's guilt. Furthermore, even where the subject consequently denies, while at court, having made the confession while in detention and alleges that torture has been used for procuring it, the proceeding judge nonetheless has the discretion to consider the denied confession as evidence of guilt. The account below highlights the use of torture for such purposes, in the case of student activists' detention:

> Following two visits with their sons, the families alleged that authorities have subjected them to 24-hour interrogation sessions, sleep deprivation, and threats of harming the prisoners and their families. The families also said that the detainees had been confined in cells with dangerous convicted prisoners, beaten and with cables and fists, and forced to remain standing for long periods of time.
>
> "Reports that Iranian authorities have beaten and threatened these students to obtain confessions are all too consistent with accounts we have collected in the past," said Joe Stork, deputy Middle East and North Africa director at Human Rights Watch. "The government should release these 19 students and activists immediately."

It is also noteworthy that even in the aforementioned circumstances of a complaint having been made regarding torture, it is very rare for any practical measures to be ordered by the judge in order to remedy the situation and halt the ill treatment. Consequently, the effectiveness of torture is increased, in the perception of the authorities, due to the lack of punishment for the physically abusive security personnel and the admissibility of coerced confession in court hearings, even where the subject complains about the treatment incurred.

In light of the wide variety of circumstances in which torture is routinely used, as highlighted above, it is unsurprising that the Iranian legal system, instead of condemning torture, condones it within some contexts. The Iranian courts believe that the use of 'torture' is legal under the Islamic Punishment Law. Specifically they define the law and practice as "Tazir", which allows the judge to order a number of lashes or any other form of treatment toward the subject in order to gain information about the crime.

As the result of the Judiciary's lack of action over torture and its implicit condoning of its use, as described above, the utilisation of physical pressure and force during interrogations is a routine method of investigation that is used when a wide variety of subjects are being interrogated. For instance, as the use of torture may be an effective means of ensuring self-incrimination through confessions and consequently a decrease in the time and effort required of the security services for gathering incriminating evidence, its use is not limited to those prosecuted for political crimes."

22. As regards any impact upon him as an HIV sufferer, Dr Kakhki says this at page 176:

> "Therefore, in my opinion, the availability of medication and care for [the appellant] if returned to Iran should be considered in light of the overall

> situation in the country regarding the poor socio-economic conditions for parts of the population especially those who are of low-income, have no proper support from family members, live in remote areas, have an illness which is stigmatised etc., as well as the impact of many years of sanctions on medical supplies. It should also be considered that the availability of specialist treatment such as for HIV in prisons is very limited if not non-existent, and the regime has a history of denial of necessary/urgent medical care in order to apply pressure on detainees."

23. Dr Kakhki then deals further with this aspect of the appellant's claim at page 186 as follows:

> "I believe it is important to consider the above background evidence when evaluating [the appellant's] level of risk on return to Iran and availability of medical care of his ailment. As he is suffering from an incurable disease and has been prescribed medication, availability of medical treatment and continued supply of any medication cannot be guaranteed if he is returned to Iran; indeed, as will be discussed further, withholding such mediation and assistance may be a tactic used to compel a detainee's cooperation with the authorities as well as to persecuting them further which may be relevant to the circumstances of [the appellant's] case.
>
> For the sake if completeness, it is also worth mentioning that across Islamic jurisdictions, there is a strict approach taken towards those suffering from HIV or any other serious sexually transmitted diseases. It is even the case that in some jurisdictions for example the UAE, it is a criminal offence to be affected by one of these diseases and the offender would be arrested and imprisoned as a result of their illness. Whilst the Iranian government has had a more pragmatic approach within Iranian society, HIV is still regarded as taboo, sufferers are stigmatised due to connotations with sexual promiscuity and homosexuality, in addition to the growing association of the disease with drug addicts."

24. At page 180, Dr Kakhki specifically identified a "general policy" of denying those under investigation medical care:

> "As is clear from the above account Iranian authorities use the medical conditions of detainees to their own advantage as a means to exert pressure on them to confess during investigations and after sentencing as a form of additional arbitrary punishment. Therefore, if a failed asylum seeker is arrested on return to Iran due to their illegal departure, or any other reason they may face the prospect of being denied medical care especially due to the general policy employed by the security forces during the investigation. This situation, in my opinion, is likely to be applicable to the circumstances of [the appellant's] case."

25. The background material to which Ms Grubb referred me clearly identifies the "widespread use of torture" in respect of detainees (see the Special Rapporteur's report at pages 56 – 57).

26. The Freedom from Torture document also identifies the risk to those who are detained of being tortured (see for example pages 245 onwards). At page 250, the latter report, consistently with Dr Kakhki's report, records the denial of medical attention in detention as follows:

"**Medical attention**

Most people did not receive medical attention while in detention (47, 68%). Of the 22 who did (32%), most were treated in the detention facility, though in some cases this was provided at clinics or hospitals outside.

The majority of people had no access to medical attention during detention (47, 68%), and of those who did, most required urgent medical attention to treat injuries arising from torture.

In 21 of the 22 cases, medical attention was required to treat injuries arising from torture, including cuts, burns, fractures, suspected internal bleeding, paraplegia, testicular torsion and gangrene. Two individuals reported that wounds arising from torture were sutured with no anaesthetic and another described doctors being forbidden to answer any of their questions following an operation."

27. That report also deals at pages 250 – 252 with the incidents of torture during interrogation noting that:

"over three-quarters of people described being interrogated and tortured concurrently (54, 78%), either during all or some incidences of torture."

It continues:

"people reported that interrogation under torture was used to attempt to extract information about them, as well as third parties including family and friends (44, 64%)."

And then, it states that:

"attempts to force a confession, often under torture or threat of future torture, were also commonly reported (35, 51%)."

28. At pages 251 – 252 the report deals with detention conditions and duration of detention as follows:

"**Detention conditions**

Adequate accommodation, sanitation, and personal hygiene, provision of food and water and appropriate separation of detainees are set out in the Nelson Mandela Rules. [44] analysis of the 69 cases indicates that these standards were largely unmet.

The majority of people were detained in very poor conditions, including in small or overcrowded cells, with little or no access to adequate food or water and restricted access to toilet facilities.

Cells

More than half reported being kept in cramped conditions in a small cell (35,51%), for example rooms measuring 2 x 1 metres or rooms so small that there was only space to squat or stand. A small number were held in overcrowded cells, which were unsanitary and had no room to lie down. Many described bare rooms, with no furniture or bedding and some remarked on temperature change in their cell, for example extremes by time of day or season.

Access to food and water

A significant proportion of people in the case set reported inadequate access to food (30, 43%), with irregular meals only, for example once a day or every other day. Food was often of low nutritional value and poor quality (e.g. meals of stale bread, rice, cheese or potatoes) and in some cases mouldy or contaminated, sometimes leaving people unable to eat. A small number were given no food at all. Some described inadequate daily allocations of water or being forced to drink unsanitary or contaminated water. At least three people had no access to water at all.

Sanitation

Twenty-eight people reported restricted access to toilet facilities (41%). Of these, some described being made to wait to go to the toilet for extended periods, sometimes forcing them to urinate or defecate in their cells. A small number were not given access to a toilet at all. Over a third of people described highly unhygienic conditions (24, 35%). Including cells being kept constantly wet; foul smells such as faeces, urine and blood; heavy soiling in overcrowded cells, and infestations of vermin.

Exposure to violence from other detainees

A small number of people reported exposure to violence from other detainees (3, 4%). For example, one person reported being tattooed by other detainees while they were unable to move, and one woke to find another detainee attacking them with a sharp blade.

Duration of detention

As Figure 9 shows, most people were detained for less than a month but a number were detained for longer periods. Four people were detained over very long periods (6%), of more than four years. In five cases, detail on length of the most recent detention was not available in the medico-legal report.

Circumstances of release or escape

The majority of people were granted some form of conditional release upon the guarantee of various bail conditions (42, 61%), the most common being payment of surety (22, 32%), which in many cases involved putting up the deeds to the family home or business; being forced to sign a declaration regarding future behaviour (or other unseen documents) as a condition of release (20, 29%), or being put under reporting restrictions (9, 13%). Other bail conditions were reported in a small number of cases, for example handing over a family member suspected of anti-government activity, payment of fines, travel bans, bans on entry to higher education and vans on employment in public services.

Nine individuals escaped (13%), seven without assistance, for example from a hospital where they had been transferred for treatment, or while being transferred to court or another place of detention. The remaining two escaped with the assistance from family members who were able to bribe guards or security officials. A further nine reported being released without explanation (13%), for example they were taken from the detention facility unexpectedly and without information, and driven to a location where they were released, or in some cases dumped unconscious in an unknown location. Three people were released unconditionally (4%), either for lack of

> evidence or after serving prison time. In six cases, there was no detail in the medico-legal report relating to the circumstances of release."

29. Judge Osborne accepted, on the basis of Dr Kakhki's report, that the appellant would be investigated under the Iranian so – called "universal jurisdiction". Mrs Aboni, on behalf of the respondent, accepted that to be the case. I see no reason to depart from Judge Osborne's finding on this issue which is wholly supported by Dr Kakhki's report. There is a real risk that the appellant's drug's offence in the UK will, as a result of the online report and the Iranian authorities' monitoring of the internet, come to the attention of the Iranian authorities who will seek to investigate under their "universal jurisdiction" whether his offence has an Iranian connection such as to justify his prosecution in Iran. Dr Kakhki states in his opinion that the article would "certainly" draw him to the attention of the Iranian security authorities.

30. It is clear to me that Dr Kakhki's conclusion, in that regard, is not dependent upon his view that the appellant's offending in the UK, in itself, suggests a connection with Iran – which it does not. Mrs Aboni was not in a position to contend that the British authorities would inform the Iranian authorities of the nature of the appellant's offence. She was not aware of any such practice. In my earlier error of law decision, at paras [21] – [25] I explained that, contrary to Judge Osborne's view, Dr Kakhki concludes, in the final paragraph of his report as set out above, that the appellant would be investigated *whether or not*, in fact, the news report on its face suggested a connection with Iran. Before me, I did not understand Mrs Aboni to contend otherwise. I find as a fact based upon Dr Kakhki's report that there is a real risk that the appellant will be investigated for "possible criminal connections in Iran" if he is returned.

31. The crucial issue, drawn out in the representatives' submissions, was what would be the consequence to the appellant of that investigation.

32. Dr Kakhki's conclusion is self-evident. He concludes that the appellant would be subject to

> "prolonged detention in poor conditions, with denial of medical care, which may result in the deterioration of his health condition".

33. His report, as I set out above, also details the approach of the Iranian authorities when investigating individuals whom they have detained. Dr Kakhki's report, together with the background evidence, establishes in my view a real risk that the appellant would be subject to torture or serious ill-treatment during the course of investigating whether his drugs offence in the UK has an Iranian connection. I do not accept Mrs Aboni's submission that there is no evidence concerning how long he would be detained. Dr Kakhki says that he would be subject to "prolonged" detention and the Freedom from Torture Report, which I set out above, indicates that while "most people were detained for less than a month", "a number were detained for longer periods" and four people were detained for "very long

periods". There is nothing there inconsistent with Dr Kakhki's opinion that the appellant would be subject to a "prolonged" period of detention.

34. The circumstances of detention would, indeed, be extremely poor as Dr Kakhki points out. That is also supported by the Freedom from Torture Report where it is stated, for example, that:

> "the majority of people were detained in very poor conditions, including in small or overcrowded cells, with little or no access to adequate food or water and restricted access to toilet facilities."

35. In addition, on the basis of both Dr Kakhki's report and the background material, I find that there is a real risk that the appellant's circumstance in detention will be seriously exacerbated by his HIV status and there is real risk that he will be denied access to any treatment during the period of his detention.

36. In relation to "persecution" for the purposes of the Refugee Convention, I fully bear in mind the definition set out in reg 5 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (SI 2006/2525) that the impact must be:

> "sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Convention for the Protection of Human Rights on Fundamental Freedoms".

37. In that regard, Art 3 of the ECHR imposes a prohibition upon:

> "torture or inhuman or degrading treatment or punishment".

38. That is also the relevant definition of "serious harm" in para 339CA(iii) for the purposes of humanitarian protection under para 339C of the Immigration Rules.

39. Torture is the "deliberate inhuman treatment causing very serious and cruel suffering" (Ireland v UK [1978] 2 EHRR 25 at [167].

40. 'Inhuman' or 'degrading' treatment is that which, falls short of torture but cause substantial mental or physical suffering and reaches the "minimum severity" recognised by the Strasbourg Court having regard to the

> "duration of the treatment, its physical or mental affects and, in some cases, the sex, age and state of health of the victim" (see, e.g. Selmouni v France [1999] 29 EHRR 403 at [100]).

41. In my judgment, based upon Dr Kakhki's report and the background evidence I am satisfied that there are substantial grounds for believing that there is a real risk that during the course of the appellant's investigation under the Iranian authorities' "universal jurisdiction", an aggregation of the risks of physical ill-treatment, the adverse conditions of detention and the exacerbation of his suffering due to a denial of medical treatment for his HIV, that he appellant will be subjected to torture or serious ill-treatment contrary to Art 3 of the ECHR.

42. That impact, in my judgment, amounts to "persecution" for the purposes of the Refugee Convention, serious harm for the purposes of humanitarian protection and an infringement of Art 3 of the ECHR.

43. Ms Grubb invited me to allow the appellant's appeal on asylum grounds. She submitted, albeit briefly, that he was a member of a particular social group ("PSG") as an HIV sufferer. She did not elaborate upon that submission and she did not refer me to any background material to support her submission, in effect, that the appellant fell within the definition in reg 6(1)(d) of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 as being part of a group which in Iran shared "an innate characteristic, or a common background that cannot be changed" or which had had a "distinct identity" in Iran. Whilst there is evidence of the denial of medical treatment generally to detainees, it is not specific to HIV sufferers and whether or not the PSG is defined as those requiring medical care (or more limited to those who are HIV sufferers denied medical care) in detention, I am unpersuaded that the limited material before me which, as I have said I was not taken directly to on this issue, is sufficiently clear to identify a PSG to which the appellant belongs.

44. Nevertheless, I am satisfied that the appellant is entitled to humanitarian protection under para 339C and that his removal to Iran would breach Art 3 of the ECHR.

45. Consequently, I allow the appellant's appeal on humanitarian protection grounds and under Art 3 of the ECHR.

Decision

46. The First-tier Tribunal's decision to dismiss the appellant's appeal was set aside by my decision sent on 13 December 2018.

47. I remake the decision dismissing the appellant's appeal on asylum grounds and under Art 8 of the ECHR.

48. I allow the appeal on humanitarian protection grounds and under Art 3 of the ECHR.

Signed

A Grubb
Judge of the Upper Tribunal

28 February 2019