Upper Tribunal
Immigration and Asylum Chamber

Appeal Number AA.07572.2012

THE IMMIGRATION ACTS

Heard at: **North Shields**
On: **Wednesday 17th July 2013**

Before

Judge Aitken
Deputy Chamber President (HESC)

Between

AM Appellant

(Anonymity Direction)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT Respondent

For the Appellant: Mr S Tetty
For the Respondent: Mr C Dewison (Home Office Presenting Officer)

Determination

1. This matter appeared before me following the decision of First Tier Tribunal Judge Campbell who decided on 22nd October 2012 as follows:

"*1. The appellant's appeal against a decision to remove him from the United Kingdom was dismissed by First-tier Tribunal Judge D J B Trotter ("the judge") in a determination promulgated on 1st October 2012. The appellant claimed to be at risk on return to Iran as a person sought by the authorities of that country, on the basis of his political activities and*

attendance at demonstrations. The judge concluded that parts of the appellant's account were not to be believed. In particular, he found that the appellant had not shown that he was wanted by the Iranian authorities.

2. In the grounds in support of the application for permission to appeal, it is contended that the judge erred in law in his approach to and assessment of medical evidence contained in a report. The judge appeared to find, at paragraph 26 of the determination, that the report supported the appellant's case, but he did not go on to make any further findings. If the medical report supported the appellant's account of injury and ill-treatment it was incumbent upon the judge to make findings, showing that what appeared in the report was either accepted or rejected. The judge went on to make adverse credibility findings but without addressing the medical report.

3. This ground is arguable. The judge clearly had the report in mind, as is apparent from paragraph 19 of the determination, where that evidence is summarised together with part of the appellant's account. The report is also mentioned, as appears in the grounds, at paragraph 26 of the determination. The judge there records that he has paid particular attention to it and the same paragraph includes a summary of the findings contained in it. The judge's findings of fact then appear at paragraphs 27 to 32 of the determination, but the report is not mentioned at all. The determination does not show what part the report played in the judge's analysis and it is arguable that his adverse credibility findings have been made without regard to it. In other respects, the appearance of the determination suggests that it has not been proofed (as the question marks at the end of paragraph 25 suggest).

4. This ground, and all the grounds, may be argued. Permission to appeal is granted."

2. On 13th December 2012 Upper Tribunal judge Eshun recorded the following:

"*The respondent in the Rule 24 reply does not oppose the appellant's appeal. The Upper Tribunal, pursuant to rule 34, has decided without a hearing that the decision of the First-tier Tribunal does contain an error of law, as identified in the grant of permission, read with the grounds of application, and should be set aside and re-made by the Upper Tribunal.*

The appeal will accordingly proceed to a hearing for the purpose of considering evidence relevant to the re-making of the decision on the basis that none of the findings of fact of the First-tier Tribunal shall stand."

3. The hearing before me proceeded on the basis that no facts were preserved from earlier hearings. The appellant gave evidence before me adopting the explanations he gave in interview and the further explanations he gave in a statement dated 20th August 2012. His account

is that he was a taxi driver in Iran but disaffected with the regime in Iran and prone to protests against it. This stemmed from punishment by lashing for being in the company of a young lady whilst without a chaperone.

4. On 10th June 2009 he attended a demonstration and his activities came to the attention of the Bonyad, an organisation which offers support to the relatives of those martyred for Iran, in the appellant's case his father. In December 2009 he attended one of the well reported demonstrations against the Presidential election result. He became involved in a scuffle with a police officer and injured his leg but was able to escape, nonetheless he was arrested on 19th January 2010, he was lashed and fined.

5. This did not dissuade him and he returned to demonstrate on 29th March 2010, he was seen wearing green wrist and headbands and they were forcibly cut from him whilst he was in the crowd. He arranged medical treatment for tendon injuries via his sister who is a doctor and the medical records indicate that the injury is a glass injury in an attempt to protect him.

6. He was served with a summons to attend court on 5th March 2010. In May 2010 he was sentenced to imprisonment, but the appeal was allowed in part in July. He received a further summons on 1st September 2010.

7. In late 2011 and early 2012 he was distributing fliers denouncing the regime jointly with a friend. That friend was arrested and the appellant fearing he would be identified by his friend fled Iran, crossing into Turkey on foot thereafter utilising a lorry to get to the United Kingdom.

8. The appellant produced a number of photographs of injuries and scars to his body, there was also a comprehensive medical report of Dr Lesley Lord. Dr Lord can fairly be described as an expert in the area of scar, wound and injury interpretation, having a number of qualifications and long experience as a Police surgeon and undertaken over 300 examinations similar to those of the appellant. Her conclusions, which I accept, are as follows:

   "27. The appearance of his nose is typical of a blow to the nose. He did not take part in any contact sports such as boxing or wrestling. While it could have been as a result of his accident I would have thought that it would have been corrected during all his other treatment. It is therefore most likely due to being punched on the nose as he described during his detention in 2009.

   28. The scar on his forehead is diagnostic of an incited wound (full thickness injury caused by a sharp object). It shows signs of stitching. It is in the position of a headband and so is where I would expect it if his headband had been sliced through.

29. The scars on his right wrist are diagnostic of incised wounds and both show signs of stitching. The horizontal scar is at a slight angle and is in the position I would expect if his wristband had been sliced through. The vertical scar is in the position I would expect if a further incision had to be made to repair a tendon cut through by the original wound.

30. All the other scars on his arms and the scar below his right knee are diagnostic of healed lacerations and as one would expect from being knocked over. Some show signs of stitching.

31. The scars on either side of the ankle are diagnostic of surgical scars and are in the position one would expect if there was internal fixation of a fracture.

32. There were no scars or marks on his back despite two episodes of lashing. It is my experience that the bruising caused by lashing usually disappears after about three months and pigmentation only remains in people with very dark skin such as Africans."

9. I do not take Dr Lord to be suggesting in paragraph 27 anything other than that the mechanism which caused the injury is most likely to be as described, rather than the location and date being accurate. Her findings are therefore supportive of the appellant since all of his scars are consistent with his account, in particular the injuries to his wrist and head are rather more unusual than the other areas and carry more weight accordingly. Mr Dewison sought to make a point about the appellant claiming he had the pins removed from his ankle either 5 or 9 years after the operation, and the medical information the respondent had indicated they would be removed after a few months. Since the injuries certainly were sustained it is difficult to understand what benefit the appellant might gain form exaggerating the time the pins remained in his legs, Mr Dewison indicated it tended to show unreliability, that may be so, but since it is in an area unrelated to his claim it does affect his credibility to any significant extent.

10. The appellant produced a number of documents to support his case. I can give very little weight to the medical documents, the appellant indicates they were produced by unorthodox methods since his sister was able to get access to his records out of hours. Official documents such as medical records carry weight because of the difficulty in obtaining anything but an official version, and the likelihood that the official version was recorded properly by someone under a duty to do so contemporaneously. Here the appellant freely states that the records of injury to his wrist were knowingly falsified at the time to read as being from glass injuries and that the records as a whole were not produced through proper official channels. These factors tend to demonstrate that although the documents are official looking, they do not carry the weight of the state's inviolable processes, rather they have been knowingly adapted by an individual for his own

purposes. Mr Tetty submitted that I should take into account the honesty of the appellant in admitting this, and I shall, however it is of less account than an official document one has trust in looking at the situation overall.

11. Mr Dewison had comments to make regarding the court documents which were produced by the appellant. In particular a point which the respondent had previously raised was that one summons document bore the equivalent of 1st September 2010 as its date, and yet as the appellant claimed to have been convicted in July 2010 it made no logical sense for this to be so. This document is now accompanied by a correction note from the translators indicating that it is their error and the date was in fact the equivalent of 1st July 2010. The significance is that the document is now part of a logical sequence of summons and verdict. I have indicated that this is not a point to be held against the appellant on the assumption that the respondent has had an opportunity to examine the document as it was handed to them and has until now had the opportunity t see what the date is in Farsi on that document. I had indicated that the respondent must make application if it was suggested that the correction note did not now represent the face of that document, since none has been forthcoming it is clear that the documents in that respect at least are unremarkable.

12. Even resolving the dates in the appellant's favour, as it is clear one must the form of documents is still troublesome. At C5 is a summons to attend the Police Prosecutors office within 3 days of 1st July 2010 (it is now known). There are some formal parts of the form indicating that a warrant will be issued for non attendance and that if a lawyer or any witnesses are to be called they should be "introduced". There is a threat to decide the case in the appellant's absence if he does not attend. The form appears relatively unremarkable in itself. However at C7, on the same day with the same reference numbers Branch 13 of the Farsi Provincial Appeal Courts issues what appears to be a decision reducing the appellant's sentence for taking part in the same assault and insult specified on the summons. The two do not sit together neatly. However it does seem to me possible that the summons was triggered by the verdict and requires the appellant to attend to take his punishment in this case 4 months imprisonment. The formal parts do not match the procedure exactly, but it would not be impossible for an official document to be used in slightly mis-matched circumstances, or at least I can envisage its use in that way. The overall effect is to lessen the weight which can be attributed to the documents because they do not form a seamless bureaucratic record according with his account, but nor are they worthless since his account accords closely to them.

13. The appellant was generally consistent in his accounts, save in one particular respect, when he gave evidence before Judge Trotter he indicated that he went to the hospital at noon to have his wrist and head seen to, arranged by his sister. Under cross examination and in re-examination he denied having said that and was adamant that although he might have said something to the effect that he went to the hospital when

it was quieter, and since the shift change was 3pm it could be just after that or when it was dark he did not say noon or 1pm. The Judges notes are clear "*It was done about noon*" That is a plain inconsistency with regard to his evidence and it adversely affects his credibility. As against that the appellant has given a lengthy interview which is rich in detail, he answered over 150 questions and the detail in the questions is often as long towards the end as it is at the beginning, this tends to support his account since the inconsistencies are few and far between. I note also he is prepared to treat in a somewhat offhand manner his avoidance of military service in his interview, something it seems to me unlikely he would do if he felt he needed to find reasons to improve his case.

14. Looking at all of the evidence I consider that there is a serious risk that the appellant may be telling the truth about his conflicts with the regime in Iran. In **SB (risk on return-illegal exit) Iran CG [2009] UKAIT 00053** the Upper Tribunal held that events in Iran following the 12 June 2009 presidential elections have led to a government crackdown on persons seen to be opposed to the present government and the Iranian judiciary has become even less independent. Persons who are likely to be perceived by the authorities in Iran as being actively associated with protests against the June 12 election results may face a real risk of persecution or ill treatment. Being a person involved in court proceedings in Iran who has engaged in conduct likely to be seen as insulting either to the judiciary or the justice system or the government or to Islam constitutes another risk factor indicating an increased level of risk of persecution or ill treatment on return. Taking those risk factors into account I find that the appellant has established that he would be at risk of persecution were he to be returned to Iran.

Decision

The decision is remade.

The appeal is allowed on Refugee Grounds and Human Rights Grounds

Under Rule ***14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008*** The appellant is granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No report of these proceedings shall identify this appellant or any member of their family either directly or indirectly.

Note that a failure to comply with this direction could lead to proceedings for contempt of Court

Judge Aitken
Deputy Chamber President (HESC)