



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal no: PA/03639/2015

**THE IMMIGRATION ACTS**

At **Field House**  
On **20.11.2017 & 29.01.2018**

Decision & Reasons Promulgated  
On **02.02.2018**

Before:

Upper Tribunal Judge  
**John FREEMAN**

Between:

[W H]

appellant

and

**Secretary of State for the Home Department**

respondent

Representation:

For the appellant: *Sophie Caseley/Grace Capel* (counsel instructed by Paragon Law,  
Nottingham)

For the respondent: Mr Tom Wilding/Mr Esen Tufan

**DECISION AND REASONS**

1. This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Ian Freer), sitting at Taylor House on 19 May, to dismiss an asylum and human rights appeal by a citizen of Iran, whose date of birth is conventionally recorded as 1 January 1998. Permission to appeal was given on the judge's treatment of internal relocation, including the appellant's prospects if conscripted for military service: other points may be relevant to those issues.
2. The appellant had given a history of his father having been a drug smuggler across the Iraqi border: in [ ] 2015 he had been killed in an incident there, and fellow-smugglers had come to the appellant, as his eldest son, to try and persuade him to take over the family business, which he was unwilling to do. The appellant was afraid of repercussions, so arranged with the help of his uncle to leave Iran, and on 21 July arrived in the back of a lorry in Corby, Northamptonshire. He claimed asylum three days later, but on 27

NOTE: (1) *no anonymity direction made at first instance will continue, unless extended by me.*  
(2) *persons under 18 are referred to by initials, and must not be further identified.*

November it was refused. The first decision dismissing his appeal was set aside on 29 December 2016, and a fresh hearing directed.

### FIRST-TIER DECISION

3. Judge Freer, in general terms, accepted the appellant's evidence on the primary facts about which he knew; but, for reasons he gave, took the view that it did not raise a well-founded fear of persecution. The appellant's first ground of appeal turned on his approach to the relevant country guidance, in *SB* (risk on return-illegal exit) Iran CG [2009] UKAIT 00053. The judge discussed the circumstances in which the appellant left Iran at paragraphs 51 – 52, and went on at 53 – 54 to summarize the effect of *SB* in these terms:

“... 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. The illegal exit is not a significant risk factor. The heightened risk relates to the political profile, in those cases which have any. I find this case is wholly lacking in any political profile.

Much is made of the risk to those leaving when facing Court proceedings. [The appellant] did not leave at a time when he was facing Court proceedings. There is no known arrest warrant.”

4. This seems to me a fair summary of the judicial head-note in *SB* at this point:
- (iii) *Being a person who has left Iran when facing court proceedings (other than ordinary civil proceedings) is a risk factor, although much will depend on the particular facts relating to the nature of the offence(s) involved and other circumstances. The more the offences for which a person faces trial are likely to be viewed as political, the greater the level of risk likely to arise as a result. ..., being involved in ongoing court proceedings is not in itself something that will automatically result in ill-treatment; rather it is properly to be considered as a risk factor to be taken into account along with others.*
  - (iv) *(Being a person involved in court proceedings in Iran ...)* cannot apply in this case, so that the applicability of
  - (v) *(Being accused of anti-Islamic conduct likewise also constitutes a significant risk factor)* is the only open question on that part of the country guidance.
5. The judge went on to refer to *SSH and HR* (illegal exit: failed asylum seeker Iran (CG) [2016] UKUT 308 (IAC), citing paragraph (b) of the judicial head-note:

*“An Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian State does not face a real risk of persecution/breach of his Article 3 rights on return to Iran on account of having left Iran illegally and/or being a failed asylum seeker. No such risk exists at the time of questioning on return to Iran nor after the facts (i.e. of illegal exit and being a failed asylum seeker) have been established. In particular, there is not a real risk of prosecution leading to imprisonment.”*

6. Miss Caseley's argument on ground 1 was that, since the judge had accepted (at paragraph 51) that the appellant had left illegally, and (45) that “Drug crime is an important political issue” [in Iran], he fell within paragraph (iii) of the country guidance above. However, that would depend on whether he left facing court proceedings, which, if any had been

thought of, had not even got so far as a warrant of arrest. Since the police have not pursued them with his mother (see 7 (c) below), there is nothing in the point at paragraph 8 of the grounds. Nor is there any basis for allowing the appeal on paragraph 9: the judge's comments at paragraph 43 represent his declining to accept all the presenting officer's submissions; but there was in fact no evidence of any warrant of arrest being issued against the appellant.

7. Turning to ground 2, paragraph 12 of the grounds criticizes the judge for a number of what are said to be unwarranted assumptions: I will deal with them in order.
  - (a) is about the judge's findings at paragraph 63 as to the police having had "... access to every adult concerned", that is, under any suspicion of being involving in the appellant's father's drug dealings. I do not see anything unreasonable about this: the appellant was 17 when he left Iran after the death of his father, over two years before the date of the first-tier hearing, and, one way or another, it was legitimate for the judge to proceed on the basis that the police would by now have exhausted their inquiries. Returning for the moment to paragraphs 10 and 11 (and see also 13), whatever the judge said about the likely results of prosecution, if it happened, he was entitled not to accept that it was reasonably likely to do so.
  - (b) The only point here which might in theory leave a doubt on (c) is about the smugglers telling the appellant (see paragraph 23 of his statement) that they had themselves pointed the finger at him to the police; but, since that casting of suspicion had preceded the police's second visit, and there was no evidence that this visit had been succeeded by others, the point made at (c) remains valid.
  - (c) This is about the judge's conclusion at 70 that any remaining inquiries would lead to no risk for the appellant. It is criticized as not borne out by the judicial head-note in *SSH and HR*, to which the judge referred, on the basis of the police visits to the appellant's house, accepted by the judge at 42 - 43, and the appellant's own statement, paragraphs 21 - 23, about their having shown suspicions that he himself was involved in the drugs business. However, the appellant's own evidence was that, on their second visit, the police had thoroughly searched his family house, found nothing, and left. While he had further visits from the smugglers before he left Iran, there were none from the police; and that was also the position when he spoke to his mother from Istanbul (see 30).
8. As for paragraph 14, while the judge's statistical approach to the risk of execution generally in Iran was perhaps misplaced, he did not accept that this appellant would face prosecution, on a capital charge or at all, and so there was no basis for any such risk in this case.
9. Ground 3 refers to the judge's conclusions on internal relocation: Miss Caseley's first point was to ask, rhetorically, how the appellant would get to Teheran to seek safety there? That has to refer to difficulties he might face on arrival at the city's airport, to where he would be returned; but see my conclusions on ground 1 for my views on this.

10. Next the judge is criticized for rejecting (at paragraph 72) the ‘country expert’s opinion on the appellant’s potential safety in Teheran, without giving reasons for that. However, the main reason why Dr Kashefi had said he would not be safe there was something the judge did deal with, at paragraph 66. I will deal with this and other points on internal relocation if I find I need to, after considering all of the applicant’s case on risk on return, not only at the point of return, but in his home area.
11. I have already dealt with the first under ground 1, and much of the second under ground 2; but there remains ground 4. This criticizes the judge’s approach to the issue of whether the appellant would have sufficient protection in his home area. It is suggested that there is an internal contradiction between his findings at paragraph 50, to the effect that drug gangs had penetrated law enforcement agencies to the extent that the appellant could not safely approach any individual law enforcement officer for help; and at paragraph 74, where he says this:
- “It is strongly doubted that most police, or even many, are under the influence of this gang. It is doubted that the gang will know to look for him in Tehran or wherever he is conscripted to It is doubted that they will know to check if he has re-entered Iran. He can relocate away from them and earn good money independently.”
12. The judge was perfectly entitled to find that a drug gang operating on the mountainous border with Iraq would not be alert to trace the appellant on return to the capital (population around 8.8 million in the city and 15 million in its larger metropolitan area, account to Wikipedia) or its airport, both several hundred miles away. I shall return to what is said to be the risk he would face on conscription. There remain also the general points made under ground 3 about internal relocation to Teheran, and I shall deal with all these in the order they are made.
13. First, while the judge acknowledged at 71 the availability of nationwide intelligence to the police, he made no finding that the drugs gang would have similar resources, and, in view of what he said at 74, set out at **10**, it is quite clear that he did not accept this. So far as police intelligence is concerned, no doubt they would have some means of tracing anyone in whom they were seriously interested; but, as to that, see the judge’s findings dealt with above under ground 2.
14. Second, the judge is criticized for going on, at 71 – 72, to say this
- “[The appellant] cannot relocate, suggests the expert, because he would need contacts and money. State support is very limited for unwaged or unemployed young men. He would have only poor access to education, healthcare, housing and job opportunities.
- I find that I reject the expert view on this issue. He can relocate to Tehran which is a modern bustling city with numerous job opportunities open to him.”
15. Though the judge gives no reference for the evidence cited, it is taken *verbatim* from paragraph 40 of Dr Kashefi’s report. While it is entirely possible that the judge was right in his assessment of the economic situation in Teheran (following the well-known recent upturn resulting from the partial lifting of sanctions, with which Dr Kashefi fails to deal),

he does not refer to any evidence contrary to her expressed view on this point. While it is by no means a foregone conclusion that accepting her view would have led to his finding that internal relocation would not be available, I think the question needs to be argued, in terms of *AH (Sudan)* [2007] UKHL 49, and any other relevant authorities, preferably on the basis of evidence from both sides. Directions were given following the first hearing for a further one for that purpose.

16. The third point concerns the judge's finding at 33 that the appellant "... remains a vulnerable witness, by reason of his age. There is no bright line drawn at 18 years". While that specific finding concerned only his position as a witness, the appellant's personal characteristics will of course be relevant on the question of internal relocation; but they do not go further than his age, which will be 20 by the time I deal with that question.
17. The fourth and last point concerns Dr Kashefi's "finding", as it is dignified in the grounds, that (see her paragraph 38) "More than likely [the appellant] will be transferred to [areas nearer his home] to serve his conscription where he is likely to be identified by his father's friends [*ie the drugs gang*]. In her original report Dr Kashefi cited not a scrap of evidence for this conclusion, and it provided no basis whatsoever for any arguable error of law on the part of the judge.
18. The result of the 20 November hearing was that the judge's decision stood, except for his conclusions on internal relocation to Teheran. Since the basis for that exception concerned only the general availability of that option for a young man of this appellant's age, there was no need for any further oral evidence; but for time reasons, directions were given about a further hearing on 29 January.

#### FURTHER HEARING

19. Those directions provided that this hearing would be concerned with the points set out at paragraphs 14, 15 & 17 above only. While I suspect that 17 was my mistake for 16, since that was the third paragraph in which I dealt with internal relocation, by 29 January a further report by Dr Kashefi had been filed, dealing with 17, and I said I should be prepared to consider it, together with the further evidence dealing with internal relocation.
20. On that basis, Miss Capel raised no objection to the late submission of further evidence by Mr Tufan. This consisted in
  - (a) the Home Office Country Policy and Information Note [CPIN], December 2017; and
  - (b) a Home Office web-page on their voluntary assisted return and reintegration programme [VARRP], down-loaded 26 January 2018
21. **Military service** As Miss Capel dealt with that evidence, from her point of view, in the course of her submissions, I shall go through all the evidence as she dealt with it, beginning with the material on military service. The passage in which Dr Kashefi dealt with the point at 17 in her additional report (12 January) was at paragraphs 1.10 – 14. At 1.10 she notes that there are ten training camps for conscripts in the appellant's north-eastern area of Iran; but the next posting is where they serve the rest of their time.

Married men are given priority (1.11) for service in their home town, ‘regardless of the unit’.

22. However (1.12) on 2 April 2016 the commander of the border police had said their main objective for the year just starting was to deal with smuggling: the best choice would be to deploy soldiers local to the region, and this was their objective. Other officials had stated similar objectives before, and Dr Kashefi thought it was reasonably likely that this appellant would be deployed to the border area after basic training.
23. Further evidence is given at 1.13 – 14 about the actual deployment of conscripts to border areas, and reactions to it. On 5 January 2016 one was killed and three injured in an avalanche at a border post between the provinces of Kurdistan and Kermanshah. Since this was a provincial border, rather than a state one, there is nothing on the face of this to show any existing practice of deployment of local conscripts on international borders.
24. There had however already been another incident on the Iran/Pakistan border on 12 November 2013, when 12 conscripts serving there had been kidnapped and murdered. An Iranian news web-site published an article “Why guard borders with inexperienced convicts?”. Dr Kashefi says there had been repeated questions asked about this, but it was still “... an ongoing and active policy”.
25. There is further material in Dr Kashefi’s additional report about exemptions from military service, both educational, to which this appellant would clearly not be entitled; and for family reasons, if he showed he was the only provider for his widowed mother. Since his younger brother was only 14 when he left (so 16 now), there might have been some chance of that; but there is no point speculating about it, since the judge chose (see 59) to accept the appellant’s evidence that he had lost all means of getting in touch with his mother with his mobile phone in Turkey.
26. Dr Kashefi referred to the relevant Iranian legislation by its English acronym ‘CC’ at 1.27. Article 58 required the armed forces actively to look for missing conscripts and other government agencies were required to co-operate with them. Nevertheless she acknowledged (1.29) that “... draft evasion is a fact and many go missing”. An MP had mentioned a figure of 40% in poorer areas.
27. The only open question on military service, on the grounds for which permission was given, is whether the appellant would be reasonably likely to be called up on return to serve in the border force in his home area. Dr Kashefi’s conclusion on this has already been referred to at **24**, and appears in full at 3.2:
 

‘As explained in paragraphs 1.12 and 1.13 above, if he does serve there is every possibility that he will be placed in his home province and as explained likely that he would be deployed at border crossings. This puts him at risk of exposure to his father’s smuggling gang and/or the local security disciplinary forces.’
28. Miss Capel urged me to accept this as it stood, being the view of a recognized ‘country expert’. However, I regard it as particularly important for expert witnesses in this field to support their conclusions by evidence, either documentary or, where it relates to a direct personal experience or communication, a precise reference. There is nothing of this kind

in Dr Kashefi's report; so it has to be evaluated on the strength of the documentary sources she gives. This is particularly important in a field such as this, where the expert witness can be confident that she will face no opposing evidence of the same kind, and where her personal appearance for cross-examination is unlikely to be required.

29. **My conclusions** on this point are as follows:

- (a) the appellant is reasonably likely to be called up on return;
- (b) if that happens when he had managed to make his way back to his home area, then his basic training would be likely to take place in that part of Iran;
- (c) the evidence referred to by Dr Kashefi at 1.12 – 13 shows that conscripts were serving on an international border in 2013; what happened then caused an outcry;
- (d) by 2016, the commander of the border force was still referring to local deployment of conscripts in border areas as an objective: the making of previous similar statements suggested that it remained an aspiration, rather than "... an ongoing and active policy ...".
- (e) while there is some likelihood that the appellant would be posted to do the rest of his military service in his home area, there is no basis, in view of the judge's findings (upheld at 7) for any suggestion that this would put him at risk from the security forces himself;
- (f) as for risk from his father's smuggling gang, not only would he have to be posted to their particular area of operations, but they would have to recognize him, in military uniform and now nearly three years older, as the reluctant heir of his late father's role, and still be disposed to take personal vengeance on him for not complying with their wishes.
- (g) In my view this would be no more than a chance on the chance of being posted to that particular point, and would not raise a reasonable likelihood of the appellant's facing persecution on the basis referred to at 17.

30. **Internal relocation** Mr Tufan referred to the CPIN at 3.1.2:

'Internal relocation to another area of Iran is generally reasonable if the risk will not be present in the place of relocation but will depend on the basis of the threat and the particular circumstances of the person.'

This is of course no more than a starting-point, as the passage itself makes clear. As already explained, there would have no basis in this case for any continuing individual threat in Teheran, even if there had been one in the appellant's home area, though the existence of such a threat there would be the only reason for any need for internal relocation.

31. If that were to become relevant, then the appellant's relevant characteristics would be his age, now 20; his lack of any education or formal work experience, and the fact that, although he made an overland journey of several thousand miles to this country, with the help of an agent, he is apparently still living in local authority accommodation. The CPIN itself makes an exception (2.3.3) for 'religious minorities': while this appellant is a Sunni

Muslim (5 – 10% of the population as a whole, compared to 90 – 95% Shi'a: see 6,2,1), the very small numbers of Zoroastrians, Jews and Christians (only 0.3%, taken together) makes it clear that these, and not Sunnis are the 'religious minorities' referred to.

32. Dr Kashefi's anecdotal evidence at 1.39, while no doubt reliable in this case, as personal communications are cited for it, relates to experiences of Sunnis during military service recounted by Kurds, and I do not regard it as relevant to any problems likely to be faced by this appellant, who is not a Kurd, in Teheran, or for that matter on military service, though that was not part of the case he was permitted to raise before me.
33. There was a good deal of discussion in argument as to the real effect on ordinary Iranians of the partial lifting of sanctions against the regime. While the CPIN (10.2.1) gave the official rate of unemployment as 10%, some sources in the appellant's further bundle for this hearing gave local rates as high as 60%. However, none of those refer to Teheran, and the only relevant national figure given is in a *New York Times* article of 1 January this year [AB 33], where an official figure for the youth rate is given as "... near 20 percent, but [unnamed] experts say it is really closer to 40%".
34. While the CPIN, citing an Australian government source at 10.1.1, gives the projected rate of growth of the Iranian economy from 2016 – 17 to the following year as 4 – 5%, while the World Bank (10.1.2) referred to a decline of 2% between 2015 and 2016: however "... the Iranian economy had bounced back sharply in 2016 at an estimated 6.4 percent".
35. On the other hand, Miss Capel referred to evidence (*Guardian* article 31 December 2017), suggesting that prices of some basic food items, such as poultry and eggs, had risen by 'almost half'. The *Washington Post* (28 December) referred to a named Teheran-based analyst as saying that he would not be surprised if the general rate of inflation reached 12%.
36. Housing plans (CPIN 10.4) were directed only to results in 2022: while civil service salaries were due to increase (10.2.1), Dr Kashefi pointed out at 2.2, citing the *Wall Street Journal*, that some public sector workers had not been paid for many months. Family support is the norm, and housing might be hard to find in Teheran without it (3.4).
37. Expansion, coupled with inflation, are characteristic of economies from which artificial controls have been rapidly lifted, as with Iran. If this appellant had had any experience of leading a fully independent life before he left his own country, then I have no doubt that, as a young fit single man, he could cope with these conditions.
38. However, the appellant has not been living altogether independently, either in Iran or in this country. If, contrary to the judge's findings as upheld by me, he were at any real risk in his home area, then I do not think it would be reasonable (see *Januzi* [2006] UKHL 5) to expect him to deal with it by internal relocation to Teheran, without something to cushion him against problems he might face on arrival.
39. Mr Tufan suggested two sources of support of this kind. The first is fully evidenced in the form of VARRP, which would entitle the appellant to up to £1,500 worth of reintegration assistance, including £500 cash on departure, and a variety of longer-term forms of support, once home.



40. I see nothing in Miss Capel's objection that VARRP aid is only available for those who make a voluntary departure: it is up to the individual whether to do so, and no-one is entitled to make a better case for himself by insisting on being compulsorily removed. As for her point about the decision on VARRP being in the hands of the AVR [yet another acronym, standing for assisted voluntary return] team, there are published criteria included in the web-site extract, none of which would exclude this appellant. I have no doubt that he could get VARRP aid, if he chose to do so.
41. While that would certainly enable a young fit single man with some experience of independent life to set himself up on return to Teheran, the question is clearly more finely balanced in this appellant's case. Though in the end I think the balance comes down against him, it is worth looking at Mr Tufan's other suggestion.
42. This was based on the appellant's mother having apparently had \$10,000 available in savings (see his statement, already referred to, at paragraph 20) to pay the agent to get him out of Iran and over here. While that does not necessarily mean she had significant sums left, it does suggest that this was a family with resources, which in the absence of explanation might be assumed to be available. However, once again the difficulty for Mr Tufan in relying on any support of this kind lies in the judge's acceptance, without further investigation, of the appellant's evidence that he had irretrievably lost touch with his family.
43. **My final conclusions** are as follows:
- (a) the appellant is not at real risk in his home area, for the reasons given by the judge, and upheld at **6 – 18**;
  - (b) he would not be at real risk if called up for military service on return, for the reasons given at **29**;
  - (c) if I were wrong on (a), then on balance it would be reasonable to expect him to deal with that risk by internal relocation to Teheran, for the reasons given at **39 – 41**.

**Appeal dismissed**



(a judge of the Upper Tribunal)

**Date: 31.01.2018**