



**Upper Tribunal
(Immigration and Asylum Chamber)**

SA (Iranian Arabs-no general risk) Iran CG [2011] UKUT 41(IAC)

THE IMMIGRATION ACTS

**Heard at Field House
On 27 July 2010**

Determination Promulgated

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Before

**THE HONOURABLE MR JUSTICE HICKINBOTTOM
SENIOR IMMIGRATION JUDGE PERKINS
SENIOR IMMIGRATION JUDGE MCKEE**

Between

SA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Naik, Counsel, instructed by Brighton Housing Trust

For the Respondent: Mr T Melvin, Home Office Presenting Officer

The Iranian state is suspicious of those Iranian citizens who are also Arabs and regards London as a centre of separatist activity. Being an Iranian Arab returned from the United Kingdom enhances other risk factors but an Iranian Arab does not risk persecution or other ill treatment solely by reason of ethnicity.

DETERMINATION AND REASONS

Introduction

- 1) The appellant was born on 26 September 1976, and is an ethnic Arab, from the Ahwaz area of the south-western province of Khuzestan in Iran. He is an Iranian citizen.
- 2) He appeals the Secretary of State's decision of 26 August 2004 to remove him as an illegal entrant after the refusal of his claim for asylum. He claims to be a refugee within the meaning of regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006.
- 3) We are aware of a decision of the Tribunal prepared in draft [and now reported as BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC)]. We have, of course, decided the appeal solely on the basis of the evidence before us but we note that the conclusions of the division of the Tribunal that heard that appeal are very much in line with our conclusions.
- 4) The appeal has a regrettably protracted history. It was dismissed by an Adjudicator in a determination promulgated on 13 January 2005; but reconsideration was ordered and, on 16 February 2007, the Tribunal found an error of law in that determination. The appeal was reheard by a panel of two Senior Immigration Judges and a lay member on 14 July 2008 but, regrettably, that panel too erred in law and its decision was set aside by an order of the Deputy President of the Asylum and Immigration Tribunal, Mr C M G Ockelton, on 30 December 2009.
- 5) The appeal came before us for a further rehearing pursuant to directions of Stadlen J given on 28 April 2010. Those included a direction that the Secretary of State produces "an updated refusal letter", which she did on 16 June 2010 and has been considered in this appeal.
- 6) At the hearing before us, the appellant gave oral evidence. In addition we had the benefit of a witness statement from Mr Ali Moramazy, an Ahwazi Arab who is now a British citizen and involved in the political activities of an organisation known as the Ahwazi Arab People's Democratic Popular Front, to which we shall return. We also had written medical evidence from Dr Alec Frank, an Associate Physician with the Medical Foundation for the Care of Victims of Torture (who examined the appellant for signs of torture and maltreatment) and Dr J Austin (the appellant's general practitioner).
- 7) The appellant also relied upon two country experts. First, there were two written reports dated 7 December 2004 and 28 January 2007 from Prof E G H Joffe who is well-known to the Tribunal. He is currently a visiting Professor at King's College, London and a Visiting Research Fellow at the Centre for International Studies at Cambridge University. Second, there was Ms Anna Enayat who has been a Senior Associate Member of St Antony's College, Oxford (attached to the college's Middle East Centre) since 1983. Ms

Enayat prepared reports dated 3 May 2007, 30 June 2008 and 14 July 2010, and further helpfully gave oral evidence.

8) There was additionally a bundle of some 700 pages of documents, which we have considered.

9) At the hearing, the appellant was represented by Ms Sonali Naik of Counsel; and the Secretary of State by Mr T Melvin, a Home Office Presenting Officer. We would like to thank them at the outset for their submissions and general assistance.

The Appellant's Case

10) The appellant claimed asylum on 27 April 2004, and attended a screening interview on 27 July 2004. His version of events given then has been, with some consistency, repeated in his statements for this appeal and in his oral evidence before us. For reasons to which we will come, we consider that much of it is not now controversial.

11) The appellant was born in Bandar Imam in Khuzestan. His father and mother have lived in Kuwait since 1992. Until the Iran-Iraq War, the appellant lived a relatively peaceful life: but, during the war, the Ahwazi Arabs were regarded by the Iraqi authorities, rightly or wrongly, as having sympathies with Iraq which at times occupied much of the area, and things became more difficult when the Iranian authorities resumed full control. Land owned by his father in Khuzestan was seized by the Iraqi Government and used to build a training centre in 1998.

12) The appellant, in evidence confirmed by Ms Enayat, said that there were a number of loose organisations in south-west Iran that supported either a separatist state or at least greater autonomy within Iraq and greater rights for Ahwazi Arabs, one being the Ahwazi Arab People's Democratic Popular Front, known in Iran as Khalagh Arab ("the DPF"). However, the appellant said that it was very difficult to engage in political activity in Iran, especially for a young person, and it was known to be fraught with risks. To join an organisation such as the DPF would be seen, he said, as a "massive, extreme thing to do".

13) However, at the end of June 2004, he became involved with the DPF. He never joined the organisation whilst he was in Iran, but he was asked to "help out" and agreed to distribute leaflets written in Arabic encouraging Arabs to assert themselves: they comprised anti-government slogans urging people to "wake up". He said he also graffitied anti-government messages on walls. He distributing leaflets for about 10 days: he said that it was some sort of "test", before he could become a member of the organisation.

14) On the night of 6 July 2004, whilst he was distributing leaflets and books in Ahvaz which was about 100km from his home, he was suddenly arrested in the Kianabad district by the Basiji or Revolutionary Guard, part of the Iranian security services. He was held for three days, during which he was blindfolded all the time, except he was allowed to remove the blindfold once a day to use the toilet. He was fed once a day on lentils and rice

and given water at the same time. He knows that he slept on a hard, concrete floor. He thought that he would die because of the intense heat. He was attacked, beaten and interrogated. There were marks all over his body, some lasting until the time he made his statement. Dr Frank, who examined the appellant after his arrival in the United Kingdom, found physical signs of scars and marks on the appellant's face and scalp which supported that account.

15) On the third day of his detention, whilst still handcuffed and blindfolded, he was put in a car and driven for half an hour. He was then transferred into another car, which he realised was his brother's car; and his brother was telling him to take off the blindfold. His brother was aware of his leafleting activities, but he did not approve of them. He was angry that the appellant had been seized because of them, but, as his brother, felt bound to help him. The appellant saw no inconsistency in his brother being angry and in his brother driving him across the Turkish border. He said it was the nature of Iranian society that his brother would do anything for him. That was also the evidence of Ms Enayat. The appellant said that, although bribery is common in Iran, if bribery comes to the specific attention of the authorities both the person bribed and the person doing the bribing would be in serious trouble.

16) When the appellant took off his blindfold, it was night-time, and dark. His brother told him that he had paid the authorities money to secure his release – in his oral evidence to us he said he thought the amount paid was “a good sum” which he believed to be £10,000 or \$10,000. His brother told him that he did not think it was safe for the appellant to remain in Iran. He took him to Tabriz, via the holy city of Ghom and Tehran. He was introduced to an agent, who arranged for him to go to Turkey by donkey and thence to the United Kingdom by lorry.

17) That was, more or less, the evidence that the appellant relied upon when he claimed asylum in April 2004. In the refusal letter of 24 August 2004, the Secretary of State accepted that the appellant had been arrested as he claimed, but said that, in her view, the appellant was of no interest to the authorities; otherwise he would not have been released. She did not accept that Arabs from Khuzestan might routinely risk persecution, and she refused the application.

18) On appeal, even though he dismissed the appeal, the Adjudicator accepted parts of the appellant's evidence, and these findings were preserved by the later Tribunal panel. As the Tribunal said (at paragraph 3):

“The Adjudicator found the appellant to be a credible witness in his claim to have been associated with the Ahwazian Arab Political Movement and that he delivered leaflets within an Arab area and was arrested, detained and ill-treated because of this and released after three days upon payment by his brother of a bribe. The point was accepted that the appellant suffered persecution in that regard at the hands of officials of the State of Iran.”

19) We see no good reason to go behind those essential findings, and indeed every reason why we should follow them. The evidence of the appellant before us on those matters was compelling. The appellant's version of events until he claimed asylum was

not seriously challenged by Mr Melvin, and we accept that version as we have set it out above.

20) The appellant relies upon two further matters, namely events that have taken place in Iran since his departure and, second, events that have taken place in the United Kingdom, both of which, he contends, have increased the risk that he faces on any return to Iran.

21) In addition to a worsening of general conditions for Arabs in Iran (with which we deal below: see paragraph 32 onwards) the appellant relies upon evidence as to what has recently happened to his brother and father in Iran.

22) Through his contacts with the Democratic Popular Front in the United Kingdom, the appellant said that, in February or March 2005, he learned that his brother had been arrested and detained by the Iranian authorities because of his role in helping the appellant escape from detention in Iran. He said that no one then knew where his brother was being held; but, in May 2008, the appellant's mother had telephoned him to say that she had been told by a lawyer that his brother was being held in detention in Ahwaz. The appellant's lawyer asked him to ask his mother for that lawyer's details, so that contact could be made with him, but his mother telephoned him again to say that that solicitor could not help. The appellant said that he believed his mother's solicitor was frightened.

23) In the meantime, in 2005, the appellant was told by his DPF contacts, that his father, who had been living in Kuwait, returned to Iran to see whether he could do anything to secure the release of the appellant's brother: but, as a result, his father was detained and tortured, and he died as a result of the treatment he had suffered. He was 52 years old. The appellant produced a copy of what purports to be his father's death certificate, which shows that he died on 29 December 2004 as a result of brain haemorrhage.

24) In support, the appellant relied upon the statement of Mr Moramazy. He confirmed that the appellant contacted the DPF in London in September 2004, had become a member, and had attended several meetings since (see below). He said that, in September 2005, they obtained information from DPF members in Ahwaz that the appellant's brother had been arrested and detained, and that his father had been arrested on return from Kuwait and died after being tortured in detention. He said that he thought the appellant would be executed in the event of his return.

25) As well as these events in Iran, the appellant relied upon evidence as to his own activities whilst he has been in the United Kingdom.

26) The appellant said that he had made telephone contact with the DPF in the United Kingdom, in 2004, and had become a member. No one attended the hearing to support his claim to be a member of the DPF, although he had the statement of Mr Moramazy to which we have referred. The DPF here is, the appellant said, a small and relatively loose organisation. There are no membership cards and, although there was a subscription, that was only paid by those who could afford it. He has attended seven meetings since January 2005, all in members' homes in London except one, which was held at what the

appellant described as “a fellow activist in [the DPF]” in Brighton, where the appellant was living. The meetings were attended by between four and ten people. The smallest meeting was attended by the leader of the group, who was named in the evidence, and two others. Generally, at the meetings they discussed what was happening in the Ahwazi area, including the fate of Ahwazis in Syria and Iran who were waiting to be executed. In addition to the meetings, they had contact in private chat rooms on the internet, in which up to ten people took part.

27) Additionally, he had attended four political demonstrations with the DPF. The first was in May 2005, when they demonstrated outside the Iranian Embassy in London to protest against the killing of Arab demonstrators in Ahwaz that had happened in the previous month. The next was on 18 October 2006, again outside the Iranian Embassy, to protest against the Iranian government’s decision to hang nineteen ethnic Arabs from the Ahwaz region following allegedly unfair trials. On 29 March 2007, he attended a demonstration outside the Arab League offices in London in support of the Ahwazis being detained in Syria. He said the demonstration was a collective demonstration by a number of Ahwazi parties. He said the maximum number of people at the demonstration was twenty, and he produced a number of photos of him at that demonstration, wearing a fluorescent jacket and standing in a prominent position, some of which had been posted on the Al-Ahwaz website. Finally, in April 2007, he attempted to attend another demonstration in front of the Iranian Embassy in connection with the Ahwaz uprising, but they were not allowed to demonstrate outside the embassy and the event was cancelled.

28) The appellant said that, in addition to meetings and demonstrations, he was active in talking to other young Ahwazis and trying to draw them into the organisation and he collected donations, although these were small in amount. He said he had taken part in numerous social events of the DPF, including celebrations of Eid at the end of Ramadan every year.

29) In addition to the evidence of the appellant and Mr Moramazy, we also had before us a letter from the Ahwazian Arab People’s Democratic Popular Front dated 21 October 2004 identifying the appellant as a supporter of the organisation who has been participating in its activities in the United Kingdom, and describing him as a political activist in “our homeland Al-Ahwaz and he flee to seek refuge abroad as a persecuted Arab”. The letter of 30 January 2007 describes the appellant as a member of the organisation, and “an Arab political activist who has been supporting [the DPF] and sharing the organisation’s political and social activities”. That letter suggests that he would be in trouble in the event of his return.

30) The appellant confirmed that he had no specific evidence, such as arrest warrants, showing that the Iranian authorities had a lasting interest in him.

31) Ms Naik for the appellant did not submit that Ahwazi Arabs were *per se* at risk on return to Iran. However, she contended that, on the basis of the evidence we have summarised above, the appellant would be at real risk on return. To enable us to consider

that submission in its proper context, we need to have in mind the background evidence in relation to conditions for Ahwazi Arabs in Iran. It is to that we now turn.

Risk Factors on Return to Iran

32) SB (risk on return – illegal exit) Iran CG [2009] UKAIT 00053 identified a number of risk factors for those who, like the appellant, return to Iran having left that country illegally. Those are the starting point in this case. The risk factors were as follows:

“(i) 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, although much will depend on the particular circumstances.

(ii) 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. Having exited Iran illegally is not a significant risk factor, although if it is the case that a person would face difficulties with the authorities for other reasons, such a history could be a factor adding to the level of difficulties he or she is likely to face.

(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. Given the emphasis placed both by the expert report of Dr Kakkhi and the April 2009 Danish fact-finding report’s sources on the degree of risk varying according to the nature of the court proceedings, 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 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.

(v) Being accused of anti-Islamic conduct likewise also constitutes a significant risk factor...”

Conditions for Ahwazi Arabs in Iran

33) By way of background, after the First World War, when the British had much influence in the area, there was a considerable movement for the Ahwazi Arabs to be granted self-determination. However, following the discovery of oil in the region, the Iranian authorities were determined to thwart any separatist movement. About 80% of Iran’s oil now comes from that region. Some politically active Ahwazi Arabs now refer to the Iranians as an occupying force. We found the passage headed “Key Points” in Jane’s Intelligence Review for January 2008 to be particularly illuminating. It says:

“As Iran plans for possible military conflict with the US, it is anxious to prevent militant ethnic groups from rebelling in the event the central government is weakened.

The south-western province of Khuzestan is a centre for Iran’s energy industry in terms of recoverable deposits and infrastructure. Tehran also views it as a gateway to Iraqi markets.

Local economic conditions in Khuzestan remained stagnant. Popular anger could foster militancy among the ethnic Arabs of the province, and jeopardise Iran’s lifeline.”

34) Ms Enayat described a recent programme of “Persianisation” of Khuzestan, i.e. encouragement from the Iranian Government to Arabs in Khuzestan to emigrate, and to Persians to move into the region. The publication of a letter, allegedly written by the Vice President of Iran, sparked major unrest in the region, and a substantial number of deaths and arrests. As a result, in June 2006, the Khuzestan Revolutionary Court announced 35 Ahwazis had been sentenced to death. There are reports that the interrogation of these men “fell short of international standards”. Ms Enayat said that the situation in Khuzestan remained tense, describing “the acute political crisis that followed” the elections: and, as recognised in SB, following the June 2009 elections, there has been a crackdown on those seen to oppose the government. It seems clear from this evidence that those who oppose the Iranian authorities in a high profile way may be at very grave risk.

35) In respect of the risk on return to those who are low level political activists, Dr Joffe, in his supplementary report of 28 January 2007, commented that the

“low level discontent and resentment that has characterised attitudes amongst the Ahwazi Arabs has become far more acute and the Iranian authorities have become far less tolerant of it.”

36) Ms Enayat gave evidence that, on return, she considered that it would be “virtually impossible” for citizens who left Iran without proper papers (passport and exit visas), through unauthorised border posts, to conceal that fact, whether they apply for redocumentation or obtain temporary documentation in the course of removal procedures. She said she did not think that the appellant could conceal either that he had left Iran illegally, or that he had sought asylum in the United Kingdom.

37) She also cited a report from the Wall Street Journal (3 December 2009) as to how the faces of people arriving at Imam Khomeini Airport are checked against photographs taken at demonstrations. She said that the airport at Tehran did have a computerised record system that would check for people with “outstanding business with the Iranian authorities”, but she was unable to explain how the database supporting the computer was compiled.

38) She said that there would be “a substantial risk” that anyone with a persistent connection with an Arab Iranian political party in the United Kingdom, for example because of participation in demonstrations or other forms of activity, would be known to the authorities in Iran, and they would be, at the very least, detained and interrogated on return. The fact that the appellant came from London would cause him particular difficulties. The Iranian authorities cultivated the belief that there was a London

connection with terrorist activity in Khuzestan, and they continue to accuse the West in general and the United Kingdom in particular of playing an active part in stirring up demonstrations.

39) She drew our attention to a Human Rights Watch study (Iran: End Persecution of Peaceful Activists 9 June 2010). This recorded a common practice, typically used against student demonstrators, of people being taken away for limited detention lasting a few days, during which time they were severely beaten. Such periods of detention may not lead to prison records or court documents because they were conducted by agencies outside the prison service, but records would be kept by the security services. She relied particularly on various Human Rights Watch Reports to conclude that although a public record may not have been kept of a period of detention by the security forces, the security forces would have their own records. Release by bribery did not mean that a record would not have been kept. She said that travel within Iran made little difference to the availability of the records. The country operated a gozinesh system which makes access to education, employment, military and governmental services conditional upon a rigorous ideological screening to assure a devotion to the state's official ideology of Islam. Accordingly, there was a government file on most people in Iran, whether or not they were politically active, and it followed them about. Most contacts with authority, such as applying for a trading licence, prompted examination of the record.

40) Ms Enayat said that there were currently between 2m and 8m Arabs in Iran, it being impossible to give a better estimate than that. She made it clear that she did not consider Ahwazi Arabs to be at risk in, or on return to, Iran, *per se*. Whether an Ahwazi Arab was at risk on return was multifactoral.

41) With rather disarming frankness she said that assessing the risk for the appellant was based on fairly speculative evidence. She could only "build up a picture". As we have indicated, she did not believe the appellant would be at risk just for being an Ahwazi Arab, although she thought that Ahwazi Arabs were in a more precarious position than other Iranians. Their Arab ethnicity made the authorities inclined to target them. However, everything depended on their degree of perceived political activity, immigration history and reasons for leaving Iran and the likelihood of being involved politically in Iran. Links with a separatist organisation would enhance the interest if it was discovered, the aspiration to independence being troubling to the Iranian government. She believed that attending a simple demonstration was capable of enhancing risk in Iran. She believed the appellant would be at risk if he were identified as someone who had previously been detained by the security forces for leafleting, and the risk was greater if he were known to have demonstrated or otherwise been politically active in the United Kingdom. The fact he had been in the United Kingdom for six years would lead to a greater level of enquiry, and an enhanced risk. She considered that, in the circumstances, the appellant would be at substantial risk of being detained immediately on return.

42) She considered that even low level activists were likely to be detained and subject to ill-treatment, although Ms Enayat said there is a court at the airport and the appellant could be prosecuted there. If a low level activist were pursued through the justice system,

he would not in her opinion be likely to face the death penalty, but he could expect sentences of up to 5 years' imprisonment.

43) She was asked if it was likely that a person, such as the appellant's brother, would be detained without charge for five years or more. She frankly said she found that a difficult question: but she would not be surprised by a relative being detained for a relatively short period, say 12 to 24 hours.

The Parties' Submissions

44) We have already referred to the first refusal letter of 25 August 2004, which is very brief. In the further refusal letter of 16 June 2010, the Secretary of State noted that the appellant now relied on additional evidence that his brother was detained as a result of the appellant's exit from Iran, and that the appellant was at further risk now because he had been supporting the DPF in the United Kingdom, as we have described. However, the Secretary of State did not believe that a person sufficiently well-connected to procure the appellant's release from custody would himself be detained, and certainly not for a time in excess of six years, for no better reason than being the brother of the person who was arrested and released for distributing leaflets. It was further maintained that even if the core claims were true, that would not create difficulties for the appellant in the event of his return, because they would not be known by the authorities in Iran. She did not accept that the appellant's political activities in the United Kingdom were of a "scale and type" to attract the attention of the authorities.

45) Mr Melvin's submissions were based upon those reasons. He submitted that the appellant is not a credible political activist, and, despite his previous arrest for leafleting, he would not be of any interest to the Iranian authorities on return. The activities of the DPF he described lacked any organisation and, Mr Melvin submitted, credibility. The Iranian authorities would not, he submitted, be aware of the appellant's low level political activities in the United Kingdom, even if we were to accept that he had indulged in such activities.

46) Ms Naik submitted that we should find that the Iranian authorities have detained both the appellant's brother and father, and would be aware of his political activities (as he described them) in the United Kingdom. Given that he illegally exited Iran and has been in the United Kingdom for six years (during which time he has claimed asylum), he will be of particular interest to the Iranian authorities, who will be aware of those facts: and it is likely that there will be a security services record of his detention for leafleting in 2004. In all the circumstances, she submitted that we should find that the appellant has proved his case, and we should allow the appeal.

Burden and Standard of Proof

47) We remind ourselves that before us it is, of course, for the appellant to prove that there is a real risk of his being persecuted or treated in a way incompatible with his rights under the Qualification Directive or the European Convention on Human Rights in the

event of his return to Iran, but that the evidence required to overcome that hurdle is modest. He will succeed in his appeal if he shows there is a real risk of his being persecuted in the event of his return. All of the findings below or suggested above are made following a consideration of the evidence as a whole.

Findings

48) Although Ms Enayat has not visited Iran since 1979, her opinions were supported by extensive, frequent and recent examination of reports and information emanating from Iran. She is in frequent contact with Iranian nationals, and others who live in Iran. Her evidence was not shaken in cross-examination. In relation to the general situation in Iran, including the general situation for Ahwazi Arabs in Iran, we consider her evidence well-informed, and we accept her evidence about things that have happened in Iran. We find her predictions about future risks to be illuminating and informed but we have to assess risk by applying the legal criteria set out in the Refugee Convention and the Refugee Qualification Directive, and the ECHR. A person whom she considers to be at risk will not necessarily be entitled to international protection. Although Prof Joffé's evidence was shorter and more general than Ms Enayat's, we also consider that evidence well-informed and useful. We do not accept that an Iranian from the Arab areas would risk persecution for that reason alone in the event of his return. Although there is considerable evidence in the background material to show that the authorities in Iran lose no opportunity to show their power in the Arab areas, it is going too far to say that every Iranian Arab risks persecution. That was not the appellant's case, nor would it have been supported by either Ms Enayat or the other evidence before us. The authorities are suspicious of Iranian Arabs. Such people might be interrogated more vigorously or generally attract more attention than Iranian who are not Arabs – and in that sense being an Ahwazi Arab may enhance the risks on return – but a person who was not otherwise at risk would not be at risk just because of his Arab ethnicity.

49) Low level support in the United Kingdom for separatist activities is a feature that increases the risk of persecution. Even if a person was not particularly sincere or particularly well-informed, links with separatist groups could easily provoke ill-treatment of the kind that this appellant received before he left Iran.

50) In relation to the appellant specifically, certain findings are straightforward. It has already been established by the Immigration Judge, and we confirm, that the appellant was detained by the Iranian security forces for three days in 2004 as a result of leafleting in the cause of Arab separatism. He was ill-treated during that period of detention, being blindfolded and beaten – and he was released on payment of a bribe by his brother.

51) We also accept that the appellant was smuggled over the border into Turkey with the support of his brother, shortly after his release. Although it is a criminal offence to assist anyone to leave Iran irregularly, it is also clear that many people do depart from Iran through the border where security is lax. We accept the evidence that, although his brother did not approve of his political activities and was angry when he was arrested for them, there would be a strong cultural pressure on the appellant's brother to support him:

and it does not surprise us in the least that both the appellant and his brother would want the appellant to leave Iran after he had been so ill used.

52) We also find it at least reasonably likely that some record would have been kept of the appellant's detention. The Secretary of State suggests that the appellant was treated irregularly and, in effect, was the victim of unofficial summary punishment which the authorities would have no reason to record. This, we find, misunderstands the nature of the Basiji. The fact that they operate outside the ordinary legal system is no reason at all to think that they would be coy about recording their activities and concerns. That was the firm evidence of Ms Enayat, which we accept. We note as well that there would be no reason to bring the appellant before a court or justify his detention because the security forces are not restrained by the rule of law. Even by Iranian standards, the appellant had not committed a grave offence. He was relatively young, and apparently inexperienced politically. We consider it is quite possible, indeed likely, that in those circumstances that the Basiji would want to interrogate him and frightened him: but they had no obvious reason to want to detain him indefinitely. They could achieve those ends by releasing him into the community, where he could report his bad experiences and so possibly cow others. Additionally they could benefit themselves by taking a bribe. The records could show correctly that the appellant had been released. They would not, of course, be bound to record that a bribe was paid too. It is not easy for a person used to the liberal ways of Western democracies to appreciate how readily and comprehensively some regimes keep records on their citizens. We have no reason whatsoever to doubt Ms Enayat's evidence about the gozinesh system, or to doubt that arrest and short-term detention for leafleting is exactly the kind of information that will be recorded there.

53) Neither do we have any difficulty in accepting that it is the kind of information that would come to light in the event of, and on, the appellant's return to Iran. The appellant left Iran irregularly. He has been in the United Kingdom for six years. We accept the evidence of Ms Enayat that those two matters would enhance the appellant's risk on return. Even the most benign questions concerning his identity and circumstances of leaving Iran would be at least reasonably likely to highlight the fact that he had left irregularly. Ms Enayat considered that it would be virtually impossible for that not to come out: we accept that. It is but a short step from there to find it reasonably likely that the appellant would be interrogated, and would have to admit that he left without permission. Again, it is at least reasonably likely that, armed with such information, the Iranian authorities would look up the appellant's records, and would find that he had been detained because he had been leafleting in the course of Arab separatism.

54) It does not follow that he would necessarily be persecuted. However, he would be linked in the minds of the authorities with the Arab separatist cause. We accept the evidence that the authorities in Iran believe the Arab separatist cause to be particularly well organised in London and we accept the evidence that there is heightened suspicion towards anyone coming from London because of the activities in opposition to the present regime that were said to be encouraged by the United Kingdom at the time of the election. These are all factors which heightened risk on return to a regime that, on the evidence before us, does oppress political opponents and does abuse human rights.

55) There are some matters contended by Ms Naik that we do not accept. We do not accept that the appellant faces a real risk of unlawfully severe punishment for the offence of leaving Iran without permission: nor that he would face a real risk of persecution or ill-treatment merely because he exited Iran illegally. We confirm SB in that regard. The risk that this appellant faces is not unjust punishment or ill-treatment because of his illegal exit from Iran, but ill-treatment because of his political beliefs.

56) We are also not persuaded that the appellant's brother has been detained for a period of six years. We have not found anything in the background material to suggest that such prolonged detention simply for being the brother of a suspect happens with sufficient frequency to present a real risk in this case. Indeed, we have not seen any evidence that detention for six years in remotely similar circumstances has ever occurred. We also agree with Mr Melvin that it is inherently incongruous that the appellant should be released into the custody of his brother, albeit on payment of a bribe, and for his brother to be almost immediately detained in an effort to secure the appellant's return. We think it more likely that the appellant was released because the authorities had done all they wished to do with him at that time, except obtain a bribe for his release, which they did.

57) Although the evidence before us is not optimal, we accept that the appellant's father has died. It is not unbelievable that a 52-year-old man should die of a brain haemorrhage, and, although we do not have full confidence in the death certificate produced, we have no good reason to disregard it. But, in any event, we are not persuaded that the appellant's father died as a result of ill-treatment. At the risk of being repetitive, we do not consider it likely that the authorities would release the appellant in the circumstances that they did, and then to ruin two lives trying to find him again. In reaching this conclusion, we have had regard to the written evidence of Mr Moramazy: but he did not attend before us and was not cross-examined, and he did not claim to be giving first-hand evidence but was merely passing on what he had been told. We do not give his evidence any great weight.

58) Neither do we give any weight to Mr Moramazy's suggestion that the appellant risked execution in the event of his return. We have not found any background evidence suggesting that modest support for separatist activities in the United Kingdom is reasonably likely to lead to execution in Iran. We acknowledge evidence of Arab separatists being killed, but there is no reason to think the appellant would be linked with any particular kind of serious separatist activity or somehow assumed to be a high level activist. Ms Enayat did not consider low level activists faced execution. We are not persuaded that the appellant would face risk the worst kind of persecution: but we do accept that he risks detention and a violent interrogation, which would be sufficient to entitle him to international protection.

59) We do not accept that he is part of any structure or organised political group in the United Kingdom. Indeed, he did not himself describe it in that way, but said that he was involved in a loose grouping of people of like mind, which we accept.

60) We are satisfied that the appellant does engage on an internet blog of some kind: but we are not persuaded that there is a real risk of the web activities of the appellant in the United Kingdom having come to the attention of the authorities in Iran. We are quite unaware of any electronic mechanism by which the group could have been monitored, and the identity of its members revealed. It is possible that the group has been infiltrated by security agents, but there was no good reason to think that this is so. Evidence of extensive activity by the Iranian security forces in Germany does not mean that they are equally active in the United Kingdom. It was the appellant's evidence that the participants exercised discretion in the way they identified themselves. It is not clear how the identity of the particular contributor would come to the attention of other contributors even if it were being sought. The appellant said the he belonged to a "private chat room". We are not aware of any means of discovering such a chat room through internet searches and it was not suggested to us that it could be discovered in such a way, or that its contributors could be identified.

61) The appellant's conduct at diverse demonstrations is a different matter. It is quite clear that he has taken part in demonstrations, and that on at least one occasion he was conspicuously dressed in a fluorescent jacket and in a prominent position. In an age when a significant portion of the population permanently carries with it a camera as an accessory to a mobile phone, we consider it likely that a regime as nervous as that which is in power in Iran would routinely photograph those who demonstrated against it. It is less easy to see how such people would be identified. The evidence is of people who may know being asked to look at large numbers of still and moving pictures and asked to identify someone. We are confident that the more frequently a person draws attention to himself, and the more effectively he draws attention to himself, the more likely it would be that someone might identify him. If, as seems to be the case, the authorities rely on people who, for whatever reason, are willing to name names when shown a photograph, it is possible that a person who took a very minor part in only one demonstration could be named. We think it reasonably likely that this appellant would have done enough for his name to have come to the attention of the Iranian authorities, and for it to have been passed on to the relevant authorities where an entry would have been made on his file. It makes little difference to this case as we are satisfied the appellant does face a real risk of being identified because of his past activities, but it illustrates the kind of judgment that might have to be made in the case of a person who claims to be noticed as a result of demonstrating but has no past history.

62) Nothing before us persuades us that the risk factors for those returning to Iran having exited illegally identified in SB require amendment.

Conclusion on the Appellant's Asylum Claim

63) We consider that the appellant is a refugee, and clearly so. Particularly in view of his Arab ethnicity, his past arrest and detention for anti-government leafleting (which will have been recorded by the Iranian security services) and his lengthy stay in the United Kingdom, we consider that, on return, the appellant faces a real risk of persecution because of his political opinion.

64) In the circumstances, it is not necessary to engage with Ms Naik's submissions as to how the appellant would manifest his political views in the event of his return, although his clear evidence was that he would continue his anti-government political activities if he were to return. We are satisfied that he would be at risk on arrival in Iran.

65) For those reasons, we allow the appellant's appeal on the asylum claim.

The Appellant's Human Rights Claim

66) Ms Naik did not stress the appellant's claim on human rights grounds as a separate claim, no doubt on the basis that such a claim would not succeed if the appellant's claim to asylum failed. However, for the reasons that we find the appellant to be refugee, we also find that, on return to Iran, he would face a real risk of ill-treatment sufficiently severe to make that return contrary to his rights under article 3 of the European Convention on Human Rights, and we consequently also allow his appeal on human rights grounds.

Signed
Mr Justice Hickinbottom

SCHEDULE OF DOCUMENTS

BEFORE THE TRIBUNAL

<u>DATE</u>	<u>SOURCE</u>	<u>DESCRIPTION</u>
<u>Undated</u>	<i>Ahwazi Arab People Democratic Popular Front</i>	Conference Contribution
<u>2010</u>		
28 July	<i>People's Democratic Front Ahwazi</i>	Web Pages
June	<i>Amnesty International</i>	From Protest to Prison – Iran one year after the election
20 April	<i>www.alahwaz.org</i>	People's Democratic Front Ahwazi
6 April	<i>International Campaign for Human Rights in Iran</i>	Special Court for Iranians Abroad: Established to Help or Intimidate?
19 March	<i>The Wall Street Journal</i>	Diplomat Alleges Vote-Rigging, Pressure to Spy on Son
11 March	<i>US Department of State</i>	Report on Human Rights Practices in Iran 2009
26 January	<i>UK Border Agency, Country of Origin Information Service</i>	Country of Origin Information Report Iran
9 January	<i>Voice of America News</i>	Iran's Supreme Leader Demands Strong Action Against Protesters
4 January	<i>npr.org</i>	Iranian Agents Track Dissidents Who Fled To Turkey
4 January	<i>Immigration and Refugee Board of Canada</i>	Iran: Treatment by Iranian authorities of relatives of persons who have left Iran and claimed refugee status ... or opposition protesters

January	<i>Human Rights Watch Annual Report</i>	Iran: Extract
2010	<i>Amnesty International</i>	Syria: Briefing Committee against Torture
<u>2009</u>		
28 December	<i>Radio Free Europe/Radio Liberty</i>	Ashura Violence Marks Turning Point for Opposition
24 December	<i>Voice of America News</i>	US: Iran Increasingly a “Police State”
3 December	<i>Guardian.co.uk</i>	Iran protesters claim intimidation in Turkey
3 December	<i>WSJ.com</i>	Iranian Crackdown Goes Global
December	<i>Amnesty International</i>	Iran: Election contested, Repression compounded
30 November	<i>OHCHR</i>	Universal Periodic Review – Islamic Republic of Iran: Summary of stakeholders information
21 October	<i>Amnesty International</i>	Urgent Action- Seven men at risk of execution
October	<i>Fédération Internationale des Ligues des Droit de l’Homme</i>	
21 September	<i>International Campaign for Human Rights in Iran</i>	Accelerating Slide into Dictatorship: Human Rights in Iran since 12 June 2009
1 September	<i>Ahwaz Human Rights Organization</i>	Submissions to the UN Office of the High Commissioner for Human Rights Universal Periodic Review of Iran
11 July	<i>Times Online</i>	2,000 protest in heart of London over “rigged” Iranian elections
7 July	<i>OHCHR</i>	UN experts gravely concerned by mass arrests in Iran
2 July	<i>Voice of America News</i>	Britain Replaces US as Favorite Target of Iran
1 July	<i>Voice of America News</i>	Brown: Iran Using Britain as Scapegoat for Political Unrest

19 June	<i>Amnesty International</i>	Iran's supreme leader condones violent police crackdown on protesters
19 June	<i>Human Rights Watch</i>	Iran: Halt the Crackdown
28 May	<i>Amnesty International</i>	Iran extract from Amnesty International Annual Report
20 May	<i>Compass Direct News</i>	Iranian Authorities Pressure Father to Convert
April	<i>Danish Refugee Council</i>	Extract from Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc
13 February	<i>Radio Free Europe/Radio Liberty</i>	Wife of Jailed Student Activist Arrested in Iran
10 February	<i>Aljazeera.net</i>	Focus Iran: After the Revolution - Iranian Arabs seek equal rights
5 February	<i>Amnesty International</i>	Iran: Human Rights in the spotlight
28 January	<i>UK Border Agency</i>	Operational Guidance Notes Iran
13 January	<i>Amnesty International</i>	Urgent Action Ma'soumeh Ka'bi
<u>2008</u>		
2008 Report	<i>German Federal Ministry of the Interior</i>	2008 Annual Report on the Protection of the Constitution
23 October	<i>Rooz Online</i>	Communication with BBC Outlawed
20 October	<i>Amnesty International</i>	Urgent Action Jamila Nabgan
3 January	<i>Amnesty International</i>	Amnesty International Urgent Action 03/08
<u>2007</u>		
17 October	<i>British Ahwazi Friendship Society</i>	Amnesty: Baghi jailed by Iran for supporting Ahwazi Arab prisoners
July	<i>British Ahwazi Friendship Society</i>	Human Rights and the Ahwazi Arabs
25 April	<i>Unrepresented Nations and</i>	Ahwaz: Iran's Dividing Wall

*People's Organisation
(Netherlands)*

5 April	<i>Human Rights Watch</i>	Syria: Ethnic Arab Refugee Face Persecution if returned to Iran
16 March	<i>Amnesty International</i>	Urgent Action
10 January	<i>OHCR</i>	Iran must stop executions of Ahwazi Arabs
2007	<i>Ahwazi Democratic Popular Front</i>	Political Platform and General Program with amendments in 2007
<u>2006</u>		
23 December	<i>Sunday Herald</i>	Iran's Spies
22 December	<i>UNHCR</i>	UNHCR extremely concerned for Ahwazi refugees extradited from Syria to Iran
17 May	<i>Amnesty International</i>	Iran-Appeal Case-Four Ahwazi Arab women and two children- Prisoners of Conscience