

JH
Heard at Field House
On 30 October 2002

APPEAL NO HX 12565-01
MT (Refugee – Communist
Party) Iran CG [2002] UKIAT
06995

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:
03/03/2003

Before:

**Mr K Drabu (Chairman)
Mr P Rogers**

Between

Mohammed Topaesfandyari

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation

For the appellant: Miss C Ganning of Counsel, instructed by Halliday
Reeves Solicitors
For the respondent: Mr D Ekagha, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Iran, appeals to us with leave against an Adjudicator's (Mr D J B Trotter) decision who dismissed his appeal against the respondent's decision giving directions for his removal following the refusal of his claim for asylum.
2. The grounds upon which the Adjudicator's decision is challenged run into four pages of typed text and are twenty in number. In summary the grounds contend (a) that the Adjudicator failed to pay any or due regard to the experts views, (b) that his adverse credibility findings are erroneous and unsafe, and (c) that he was wrong in his refusal to accept the appellant as a member of the Communist Party of Iran.

3. Before us Miss Ganning asked that the appeal be allowed and remitted for a fresh hearing before a different Adjudicator. She contended that the findings of fact made by the Adjudicator were unsafe and unsustainable. She argued that the Adjudicator's approach to the appellant's evidence had been unduly influenced by the Adjudicator's own values and his speculation. She argued that the centrepiece of the appellant's evidence and claim in this case is his membership or involvement with the Communist Party in Iran. Miss Ganning suggested that the Adjudicator's evaluation of the case was incomplete and incoherent. According to her any Iranian national who returns to Iran without documentation is investigated on entry. Those without any adverse history are allowed to proceed but those who have a record or "who have a background" are interrogated and tortured. She said that the appellant would certainly be interrogated and tortured for his involvement with the Communist Party: She reminded us that the appellant would be at a greater risk as he comes from a "dissident family". She took us through the contents of paragraphs 7 and 9 of the appellant's written statement to show that the Adjudicator's findings in respect of the leaflet distribution etc were based on misinterpretation and misconstruction of evidence. We drew Miss Ganning's attention to the previous decision of the Tribunal in the case dated 10 December 2001 and pointed out that the Tribunal had directed remittal on specified issues and had given appropriate directions to that effect in paragraph 9 of its determination. The Tribunal noted that at the previous hearings both before the Adjudicator as well as the Tribunal Miss Ganning had been the appellant's representative. She submitted that by looking at all the issues in the case the Adjudicator (Mr D J P Trotter) had committed a material error. When asked whether as the appellant's representative she had conducted the appellant's case on the lines set out in paragraph 9 of the Tribunal determination we were not able to get much help. We then asked her for her views on the Tribunal itself, looking at all the relevant evidence and determining the appeal. She said she could not argue that in law there would be any difficulty in us following that path but she thought it would be "unjust" for the appellant. She could not explain why it would be "unjust". She then asked us to bear the terms of the experts report in mind and find that suspected opposition persons, like the appellant in this case, face real risk of persecution in Iran on return and also that the Iranian Secret Service had infiltrated groups in the United Kingdom which made it particularly dangerous for the appellant. Miss Ganning was not able to point to any evidence of the appellant or that of the expert which matched or supported the submissions she had made to us.
4. Mr Ekagha for the respondent argued asked us to dismiss the appeal as in his view the case had no merit either on the asylum aspect or the human rights matter. He argued that in the context of Iranian objective evidence mere membership of the Communist Party would not lead to persecution. He asked us to look at page 9, paragraph 2 of the expert's report, which according to Mr Ekagha does not support the contentions which had been made on behalf of the appellant. Mr

Ekagha said that the appellant had never paid any dues, he had never shown any commitment to the Party and had never met any member. He drew our attention to the decision in Madjidi [2002] UKIAT 02245 and asked us to follow it. Mr Ekagha reminded us that although it was claimed that the appellant comes from a family of dissidents, we should note that nothing adverse has happened to any of them of late. His brother had been free to carry supplies for him when he, the appellant, was supposedly living in hiding. Mr Ekagha said that the appellant before us had obtained a membership card simply to bolster his claim. He has done nothing for the Party ever and therefore the issue of low and high profile does not apply to someone like him. Even if intelligence people come to know about his membership, they would see him as an uncommitted person and hence would have no interest in him. Miss Ganning in her final response said that intelligence personnel would not be aware that the appellant had not paid his membership dues to the party or that he had not attended any of their rallies. She said that the reason the appellant had not paid his membership dues was because he did not have money. It was not an issue of commitment. Miss Ganning asked us not to rely on the decision in Madjidi as according to her that decision was pending an appeal before the Court of Appeal. She asked us to look at the objective evidence ourselves. She drew our attention to the decision granting leave in this appeal and suggested that it was appropriate for us to remit it or allow it outright on the basis that the appellant is a refugee sur place.

5. We have given careful consideration to the arguments advanced before us, the written grounds of appeal, the Adjudicator's determination, and all the relevant evidence. We note that this case has a long history having once before been heard and remitted for a further hearing before an Adjudicator. It seems to us that the second Adjudicator (Mr D J B Trotter) did not appreciate that the appeal had been remitted for a further hearing only on limited issues. How and why this happened we shall never know for sure but we would like to say that although Miss Ganning knew of the terms of the remittal when she appeared before Mr D J B Trotter, there is no record of any objection from her when the Adjudicator proceeded to review all aspects of the case. The Adjudicator heard the case afresh taking oral evidence from the appellant as is evident from the Adjudicator's determination which was promulgated on 8 April 200. He appraised the evidence that was before him and did not believe the appellant's claim that he had fled Iran because the authorities were interested in him, that he had been involved in distributing anti-regime leaflets in Iran and that he was a member of the Workers Communist Party of Iran. Against these adverse findings of the second Adjudicator, which incidentally are in conflict with the findings of the first Adjudicator, the appellant was granted leave to appeal. It is clear that there has been some confusion in the handling of this case but it is equally clear that it is the appellant who has benefited from this confusion. He can hardly complain, having had the opportunity to give oral evidence before two

different Adjudicators and then argue before the Tribunal that both had erred in dismissing his appeal. On the first occasion he succeeded in part in that the issue of refugee sur place was remitted for consideration by a different Adjudicator. Having set out the long history of this case it could not have come as any surprise to Miss Ganning that we were unimpressed by her pleading for another remittal. We saw no need for a remittal. In our view there was no merit in any of the criticisms made by Miss Ganning of the Adjudicator's determination. For the reasons he has given in his determination the Adjudicator was perfectly entitled not to believe the appellant's evidence on leaflet distribution, the interest of the authorities in him, the reasons for him leaving Iran and his membership of the Workers Communist Party of Iran.

6. The real issue in this case, as far as we are concerned, is whether the Adjudicator's findings in respect of that evidence which goes to the issue of the appellant being Refugee Sur Place are correct on facts and in law. Miss Ganning says that it was not open to the Adjudicator to reject the appellant's evidence of membership of the Workers Communist Party as it was certified by a document that has not been shown to be bogus. We do not think much of this argument. Whether or not the appellant is a member of this organisation is not the material issue. The material issue is whether his membership, if true, caused him to be persecuted by the authorities or is likely in future to cause him to be persecuted. The Adjudicator's approach to this issue has been along the lines that we have set out and he has found that he did not suffer any persecution while in Iran for his membership of this party. He rejected his evidence of distributing leaflets and the authorities having come to know of it. The appellant we note has claimed in his written statement that he started supporting this party in January 1997. His only activities for the party according to his statement was "distributing leaflets and adverts" and it was not until November 2000 that the authorities got interested in him following the arrest of his colleague. His written statement, we note, does not claim that he had become a member of the party while he was in Iran. Not surprisingly in the circumstances that the Adjudicator was not satisfied that he was a member of the Party while in Iran. With regard to his claimed membership of the Party while in the United Kingdom the Adjudicator noted that he had produced a document which confirmed that he had become a member but he correctly concluded that such membership does not by itself make the appellant a refugee sur place. We do not find any material errors in his reasoning or in his conclusion on this aspect as set out in paragraph 21 of his determination. We have taken due note of the report of Maria T O'Shea of February 2002. We note that on page 9 paragraph 2 of the report, the expert says that "It should be possible, as Mr Topaesfandyari notes, to request details of his involvement with the WCPI from their headquarters in London". We have seen no evidence of this. We have also noted the contents of a letter dated 8 March 2002 from Maria T O'Shea addressed to Ms Ganning. We note that the expert has not stated in that the appellant's

membership of the WCPI in the UK would in itself expose him to real risk on return.

7. We support and endorse the Adjudicator's conclusions on the issue of refugee status. In our respectful view these conclusions are fully supported by evidence and are consistent with the principles laid down by the Court of Appeal in Danian and as applied by the Tribunal in the case of Madjidi [2002] UKIAT 02245. We have also considered whether the appellant faces a real risk of persecution or if any of his rights under the ECHR would be infringed on return as a failed asylum seeker from the United Kingdom. In this context we have taken account of the contents of the CIPU on Iran as well as the relevant part of the report from the expert. We do not find it established on the lower standard applicable that there is such risk in the circumstances of this case.
8. Accordingly we dismiss this appeal.

K Drabu
Vice President