ASYLUM AND IMMIGRATION TRIBUNAL

THE IMMIGRATION ACTS

Heard at: Birmingham Date of Hearing: 22 May 2009

Before:

Mr C M G Ockelton, Deputy President of the Asylum and Immigration Tribunal
Senior Immigration Judge Renton

Between

MM

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation
For the Appellant: Mr B Bedford instructed by Sultan Lloyd Solicitors
For the Respondent: Mr N Smart, Home Office Presenting Officer

There is no requirement for a State Party to the Refugee Convention to treat as a Convention refugee a person who has been recognised as a mandate refugee within the competence of the UNHCR.

DETERMINATION AND REASONS

1. The Appellant, a national of Iran, appealed to the Tribunal against the decision of the Respondent on 21 May 2007 to give directions for his removal as an illegal entrant, having refused him asylum. The removal destination proposed in the notice of decision is Iran. The Tribunal dismissed his appeal on the basis that the Appellant had no well-founded fear of persecution in Iran. The Appellant sought and obtained an order for reconsideration. Thus the matter comes before us.

2. The Appellant's history is as follows. He was born in Iran. His father was closely involved with a body called the KDPI and as a result thought it was advisable to leave Iran. He therefore moved to Iraq and the Appellant lived with him there

for some sixteen or seventeen years. We were not told whether either father or son had any lawful immigration status in Iraq. Subsequently, the Appellant moved to Turkey, and from there he came to the United Kingdom. It is accepted that he entered the United Kingdom illegally. His claim to asylum in the United Kingdom was made 6 October 2006.

3. That was not the first claim for asylum that he had made. He had claimed asylum in Turkey. Turkey is a party to the 1951 Convention Relating to the Status of Refugees, but not to the 1967 Protocol. It therefore does not recognise as Convention refugees individuals whose claim arises after 1950, and, in addition, has made a declaration under Art 1B confining the application of the Convention to those whose fear arises from events occurring in Europe before 1 January 1951. But, as a party to the 1951 Convention, Turkey accepts the jurisdiction of the United Nations High Commissioner for Refugees, as set out in the Statute annexed to Resolution 428(V) adopted by the General Assembly on 14 December 1950. Refugee status determination in relation to those not falling within the Convention as it operates in Turkey is undertaken by the UNHCR. Those whose claims the UNHCR accepts are "mandate refugees", and are issued with a document intended to evidence the identity of the claimant.

4. The Appellant's claim in Turkey was accepted by the UNHCR. He was issued with the relevant document, of which we have seen a copy, on 7 January 2004.

5. In assessing his claim under the 1951 Convention made in the United Kingdom, the Respondent appears to have taken no notice at all of the fact that the Appellant had established mandate refugee status in Turkey. The Respondent rejected the Appellant's claim because it was considered that he had not made out his case. When the Tribunal heard the appeal, there was argument relating to the decision-making process adopted by the Secretary of State and to the effect of the grant of mandate refugee status. The Tribunal did not ignore that grant. But it nevertheless considered, on the basis of the material before it as a whole, that the Appellant had not established his claim to have a well-founded fear of persecution in Iran. It therefore dismissed the appeal.

6. Mr Bedford made a number of submissions to us, some of which, if we may say so, were wild in the extreme. We may summarise them without injustice as follows.

7. First, the Secretary of State and the Tribunal were not entitled to go behind the grant by the UNHCR. In accepting him as a mandate refugee the UNHCR had determined in the Appellant's favour precisely the same questions that the Secretary of State had to determine in deciding his claim under the Convention. The Convention's requirement in Art 35 that the Contracting States undertake to co-operate with the office of the UNHCR, prohibits Contracting States from reaching a view contrary to that of the UNHCR in the assessment of an individual case. Although that obligation was, before 10 October 2006, an

obligation merely in international law, unenforceable in the English courts, it became a matter of enforceable European law on that date: that was a consequence of the coming into force of the Qualification Directive 2004/83/EC. Thus the assessment of the Appellant's claim by the UNHCR was binding on the Secretary of State and binding on the Tribunal.

8. Secondly, the Appellant, being a person with a well-founded fear of persecution in Iran, and being (by whatever means) in the United Kingdom, was entitled to the benefits of the Qualification Directive, including the grant of a right of residence for three years under Art 24 of that directive. The provisions of the Procedures Directive, 2004/85/EC (which might otherwise have allowed the United Kingdom not to grant a right of residence), did not apply to the Appellant's claim as his right to a residence permit arose before the Procedures Directive came into force on 1 December 2007.

9. We have read the letter from the UNHCR indicating its view that the establishment of mandate refugee status should be regarded by States Party to the 1951 Convention as establishing the individual's claim to refugee status under the Convention. But we entirely reject Mr Bedford's submission. First, there is neither in that letter, nor in any other material to which he was able to direct our attention, any suggestion that the obligation of co-operation is an obligation laid upon Contracting Parties to accept, and regard themselves as bound by, a determination of status by the UNHCR. Such an obligation is not implicit in the nature of co-operation, and is not mentioned in any of the places where one would expect that it might be mentioned if it applied. It is not, for example, mentioned in the letter to which we have referred. Mr Bedford sought to explain that omission on the ground that an obligation arising from European law would not be one to which the UNHCR would naturally refer. But Mr Bedford's case is that before it became an obligation in European law it was an obligation in international law arising from Art 35 of the Convention, and the UNHCR operates under international, not European law. So his explanation does not meet the point.

10. Secondly, Mr Bedford was unable to refer us to any materials suggesting that the obligation exists.

11. Thirdly, the Qualification Directive, upon which Mr Bedford relies for the incorporation of the obligation into European law, does not suggest it exists, but, on the contrary, appears to us to suggest that it does not. Preamble 15 to the Directive reads as follows:-

> "Consultations with the United Nations High Commission for Refugees may provide valuable guidance for member states when determining refugee status according to Article 1 of the Geneva Convention."

We cannot envisage that the preamble would have been expressed in that form if there were an accepted obligation to comply with decisions of the Commissioner.

Mr Bedford sought to explain this submission by saying that preamble 15 refers to only general matters of country guidance. There is in our view no basis for that submission.

12. Article 21 of the Procedures Directive refers to the role of the UNHCR and requires members states to allow the UNHCR to have access to applicants for asylum and to information on them, and:-

> "(c) to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure."

Again, there is no suggestion that the member state is obliged to accept those views.

13. The view that the grant of mandate refugee status does not oblige others to regard the individual as having established a right to refugee status under the Convention, receives considerable support from the ECtHR in Y v Russia (application no. 20113/07) to which Mr Smart referred us. In that case, Y, a national of China, obtained in Russia a grant of mandate refugee status from the UNHCR. He then sought status as a resident in St Petersburg. But the Russian authorities decided that he should be deported as a person who had no lawful status in Russia. In due course he was deported. His claim against Russia was on the basis that his deportation was a breach of Art 3 of the ECHR. In determining whether that was the case, the court considered whether, on the facts, he was at risk of treatment contrary to Art 3 in China, on the basis upon which he claimed: that is, as a practitioner of Falun Gong. The court concluded that no such risk existed. In paragraphs 90-91 of its judgment it noted that it was regrettable that the UNHCR had not been notified of the deportation proceedings against the claimant, but concluded that the claimant had not established that his removal would breach Art 3.

14. This decision is not directly on point, because the ECtHR is not a state party to the Refugee Convention, and is not an organ of any state which is a party to the Refugee Convention. But Mr Bedford accepted that if the claimant in Y v Russia was a refugee, his removal to China would have been a breach of Art 3. There is simply no suggestion at all in the judgment, that either the Russian authorities or the court were required to accept, from the Appellant's grant of mandate refugee status, that he was to be regarded as a person who was at risk of persecution in China.

15. The treaty obligation submitted by Mr Bedford to bind the Secretary of State and the Tribunal does not in our judgement exist. Art 37 of the Convention imposes an obligation of co-operation with the UNHCR, not of subjection to the UNHCR. Individual States Party to the Convention are entitled to reach their own assessments of refugee status, and are not bound by any assessment by the UNHCR.

16. That conclusion is sufficient to determine this reconsideration, but we should note in addition that Mr Bedford's primary underlying submission that, in accepting that the Appellant was a mandate refugee who came under the jurisdiction of the UNHCR, the UNHCR was determining precisely the same issues as arose in a claim under the Refugee Convention, is, to say the least, extremely questionable. The jurisdiction *ad personam* of the UNHCR is set out in Art 6 of the Statute. The only paragraph of that article that could be relevant to the Appellant is Art 6B: -

> "Any other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reasons of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence."

17. Mr Bedford submitted to us that there was no material difference between those words and the words in Art 1A of the Refugee Convention. We pointed out the absence of reference to a particular social group, and he said there was no material difference for the purposes of this case; but that was a submission by which it is very difficult to see the force in view of his primary submission that a determination of mandate refugee status is in general sufficient for the purposes of the Convention. In any event, however, it is clear from the wording of Art 6, in particular the tenses, that the jurisdiction of the UNHCR extends over persons who would not be regarded as Convention refugees. A Convention refugee is a person who is outside his country of nationality and *has* a well founded fear of persecution. A person who left his country because he *had* such a fear may or may not be a Convention refugee now; but, whether or not he is a Convention refugee now, he is included within the words of Art 6B. It is obvious that there are many individuals within Art 6B who are not Convention refugees. That the UNHCR should have jurisdiction over them is entirely understandable in view of the UNHCR's general functions; but it is in our view entirely unarguable that every mandate refugee should be regarded as a Convention refugee. (See also R(Hoxha) v Special Adjudicator [2005] UK HL 19 at [85].)

18. In view of the conclusion we have reached, we do not need to deal in detail with Mr Bedford's submission relating to the entitlement to a residence permit for three years. We say only this. Mr Bedford's argument was to the effect that between the implementation date of the Qualification Directive (10 October 2006) and the implementation of the Procedures Directive (1 December 2007) there was no provision by which a member state could decline to admit an application to status determination on the basis that he had been recognised as a refugee in a first country of refuge outside the European Union. Thus, such a person would be entitled to recognition as a refugee in the European Union, with all the benefits that that brings after 10 October 2006, even if his entry into a member state was both illegal and unsupported by any need to flee his present circumstances. In

other words, for that period of nearly 14 months, there was no effective provision against refugees entering the European Union illegally and acquiring a right of residence in the Union for a minimum period of three years as laid down in the Directive. We say only that we think that conclusion is extremely unlikely to be right. The Qualification Directive is one of a number of pieces of European legislation gradually developing and imposing the common European asylum system, and none of them can be properly understood without the others.

19. In his written skeleton, Mr Bedford also made submissions relating to whether the Appellant was removable to Turkey. No such matter arises in this appeal.

20. As we have indicated, the Tribunal after considering all the evidence before it, concluded that the Appellant had not established a well founded fear of persecution in Iran. We have rejected by Mr Bedford's only substantive attack on that conclusion, which was that the Tribunal was not entitled to consider the matter at all. There is no proper basis upon which it can be said that the Tribunal erred in law in reaching the conclusion it did. We accordingly order that its determination, dismissing this appeal, shall stand.

C M G OCKELTON
DEPUTY PRESIDENT