

Heard at Field House

SS (Risk-Manastry) Iran CG [2003]
UKIAT 00035

On 8 January 2003

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.....08 Aug 2003.....

Before:

Mrs J A J C Gleeson (Chairman)

Mr A Smith

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The appellant is a citizen of Iran who appeals with leave against the determination of an Adjudicator (Mr M D Oakley) dismissing his appeal against the respondent's refusal to recognise him as a refugee or to grant him leave to remain on human rights grounds.
2. At the hearing, Miss L Elliott of Counsel appeared for the appellant. Ms A Sellers, Home Office Presenting Officer, represented the respondent.
3. The Grounds of Appeal argue that the adjudicator applied an incorrect standard of proof; that his approach to the appellant's Dervish religion is defective in that he says it was raised at the last minute, whereas in fact great detail was given in the SEF; and that the adjudicator proceeded under a misapprehension as to the cause of the appellant's fear. By April 2001, he was clearly stating that he feared the Khatami party. The Adjudicator's failure to take into account **Gashi** was not pursued before us. Leave to appeal was granted, with specific reference to the Manastry issue.
4. The Manastry religion is also known as Manastry and is a denomination of Islam. The Islamic Government closed down the temples, as the practice

of Manastry did not conform to the official religion in Iran. The appellant operated a printing press and printed leaflets promoting candidates for Khatami's party. Members of the opposition party came to his office and broke up the printing machine. They harassed him. He left Iran on 19 May 2000, arriving in the United Kingdom a month later. In June 2001, President Khatami returned to power, but the appellant did not return to Iran.

5. The appellant's Dervish or Manastry religion was asserted in the Statement of Evidence Form (SEF). On that basis, the Adjudicator's negative credibility finding on the appellant's religion looks less sustainable. That is compounded by the unfortunate phrase in the Adjudicator's determination 'even if credible, the overall plausibility of the appellant's account does not convince me'. The standard is not whether the appellant can convince the Adjudicator, but whether there is a reasonable degree of likelihood or substantial grounds for believing that there is a real risk of prosecution or a breach of Article 3 of the European Convention on Human Rights and Fundamental Freedoms 1950 (torture, cruel inhuman or degrading treatment or punishment).
6. The appellant's account has changed from a fear of those opposed to President Khatami, to one of President Khatami's party. The Adjudicator rightly regarded that as seriously damaging his credibility. The appellant seeks to challenge the Adjudicator's negative credibility finding on the language above, and the novel concept that the issue of credibility has no relevance in deciding whether or not the facts amount to persecution.
7. For the appellant, Miss Elliott submitted that the difficulties which the appellant had experienced amounted to persecution and that on return he would be exposed to particularly harsh treatment. She reasserted the appellants' subjective fear, relying on page 2 of 24 of the US State Department Report for 2001, published in 2002. The appeal should be remitted for clear credibility findings.
8. For the respondent, Miss Sellers argued that the appellant's religious problems had only recently been asserted. That is factually incorrect. She contended that the Adjudicator's credibility findings were sound and well-reasoned, though she accepted that the language was unfortunate. The appellant's account simply did not get him home, even if taken at its highest.
9. The country evidence showed that the Iranian Government was not prepared to register the Dervish religion. That was clearly discrimination, but it was a long way short of Article 3 of the ECHR or persecution under the Refugee Convention.
10. Such problems as the appellant had experienced with the supporters of former President Khomeini in 2000 arose only out of his printing leaflets, and there was no evidence of continuing interest in him by the present régime. There had been significant improvements in the general situation in Iran, and President Khatami had been returned to power with a landslide

victory (77%). Paragraph 3.29 of the CIPU Report for October 2002 gave details of the election. She asked the Tribunal to dismiss the appeal.

11. In reply, Miss Elliott relied on the US State Department Report for its evidence of the lack of independence of the judiciary in Iran. The appellant would not receive a fair trial. She accepted that there was no evidence more up-to-date than 2001.
12. The Tribunal reserved its determination for postal delivery, which we now give. We have considered carefully the undoubted error in the standard of proof to which we have referred. We therefore considered this appeal on the basis that the appellant falls to be treated as a credible Manastry who experienced difficulties from the opponents of President Khatami in Iran in 2000 before coming to the United Kingdom.
13. We have considered the evidence in the US State Department Report. The issue of judicial independence is not relevant unless this appellant is likely to be charged. At page 16 of 24, the report records that as long ago as November 1999, President Khatami publicly stated that no-one in the country should be persecuted because of his or her religious beliefs, and that he would defend the civil rights of all citizens, regardless of their beliefs or religion. Other than that, there is no indication of the Government's attitude to followers of the Manastry religion. This report covers only the first six months of President Khatami's current term of four years.
14. The CIPU Report for October 2002 is of little more assistance. Dervishes are not a protected religious minority but and paragraphs 5.40-5.42 set out religious discrimination. However, there has not been any assertion that this appellant suffered religious persecution in Iran, nor that he is inclined to proselytise. The absence of any evidence in either of these leading reports of problems for followers of the Manastry religion indicates that in all probability, there are none, apart from some discrimination as set out above.
15. Following Ahsan Ullah and Thi Lien Do [2002] EWCA Civ 1856, the prospect on return of mere discrimination is not sufficient to engage the European Convention on Human Rights and Fundamental Freedoms 1950.
16. In relation to the alleged political problems, on any view, this appellant does not appear to be able to decide whether his fear is of the opposition or the national security forces. There is no evidence of pursuit after his departure in 2000, and given that President Khatami is once more in power, we are not satisfied to any standard that there is any present risk to this appellant.
17. **This appeal is dismissed.**

**J A J C Gleeson
Vice-President
27 June 2007**