Asylum and Immigration Tribunal

SB (risk on return-illegal exit) Iran CG [2009] UKAIT 00053

THE IMMIGRATION ACTS

Heard at Manchester (Piccadilly)
On 6 May 2009

Before

SENIOR IMMIGRATION JUDGE STOREY
IMMIGRATION JUDGE BRUNNEN

Between

SB

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Cole of Cole & Yousaf Solicitors
For the Respondent: Miss C Johnstone, Home Office Presenting Officer

(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 from Dr Kakhki 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.*

(vi) This case replaces *AD (Risk-Illegal Departure) Iran CG [2003] UKAIT 00107.*

DETERMINATION AND REASONS

1. The appellant is a national of Iran born on 22 June 1971. On 9 January 2007 the respondent decided to remove him as an illegal entrant from the United Kingdom having refused to grant him asylum. His appeal came before Immigration Judge (IJ) Hague who in a determination notified following a hearing on 23 February 2007 dismissed his appeal. He successfully obtained an order for reconsideration and in a decision dated 7 September 2007 Senior Immigration Judge (SIJ) Lane found he had materially erred in law: see Appendix A. When his case came before Immigration Judge Foudy as second-stage reconsideration she again dismissed his appeal. The appellant obtained permission to appeal to the Court of Appeal, Laws LJ remitting it by consent back to the Tribunal. The statement of reasons for disposal by consent states at para 5:

> "5. The Respondent considers that the Tribunal made a material error of law by re-opening the issue of the Appellant's credibility despite the findings of the first Immigration Judge (ground 1). Further, or in the alternative, the respondent considers that the Tribunal made a material error of law by not considering the medical evidence submitted by the Appellant when assessing the Appellant's oral evidence and credibility (ground 2(ii)). Accordingly the parties agree that this matter should be remitted to the Tribunal to consider the appellant's case with respect to the assessment of risk on return to Iran in light of the positive credibility findings of the first Immigration Judge, which the parties agree shall stand. "

2. The positive credibility findings here referred to were those made by the first IJ, IJ Hague. As set out by him at para 7 of his determination, they were as follows:

> "7. The appellant's account can be summarised thus. He began military service in 1989 and was posted to serve in a Sepah unit. His duties involved guarding political prisoners. The sound of the ill treatment of prisoners was distressing to him and he asked his superior officer, Haji Karimi, for transfer to other duties. The refusal resulted in a scuffle between the two in which the officer's nose accidentally got broken. The appellant was court martialed, sentenced to four months custody and given an extra ten months military service. During the period of his detention he was subjected to beatings and interrogations. On release he was sent to serve out his time at the Sepah Yekum headquarters in Ahwaz. Haji Karimi who was still his commanding officer was vindictive and ensured that the appellant had extra duties and restricted leave. Towards the end of the period of military service a building that the appellant was guarding was burnt and the files therein destroyed. He was arrested and held without charge for eight months, before being given bail upon his father persuading a neighbour to lodge the deeds of his house as surety. On release the Appellant went on to complete his military service and then was discharged but he was not issued with a "completion card". As a consequence of this he has been unable to obtain a driving licence, to take work in nationally owned companies, to marry or to open a bank account. The arson case has never been brought to court and he remains on bail. In consequence the neighbour's house deeds remain as surety in the court file. The neighbour has died and his children wish to divide the estate up, but are unable to do so and have been putting pressure upon the Appellant to get the deeds released. The Appellant has been unable to do so as the courts insist that it is a matter for the Sepah and the Sepah insist that it is a matter for the court. On 7/10/06 the Appellant went to court with his neighbour in order to demonstrate to him that he was doing everything that he could. The judge told him that he had no power and that it was a matter for the Sepah, and the appellant responded by telling the judge that although he professed to do justice it was only a lie. That night the authorities came to his home when he was out. They told his mother that he must surrender to them as he is guilty of anti Islamic conduct. He decided to flee the country fearing the treatment the he would receive."

3. The medical evidence referred to in the statement of reasons consisted in a report dated 19 December 2007 by Dr Michael Scott who is an established expert in the assessment and treatment of patients with post-traumatic stress disorder (PTSD). His report concluded that the appellant was suffering from severe PTSD and that this was a consequence of torture in Iran. There was also a letter from Miss V C Lees, a Consultant in Hand and Plastic Surgery, dated 21 December 2007. She stated that the appellant had alleged he was tortured in Iran 13 years ago, sustaining a deep laceration to the base of the palm affecting his ulnar nerve.

4. In addition to the medical evidence from late 2007 the parties had adduced a considerable number of background documents dealing with conditions in Iran, including a 1 November 2007 report by Gozaar (Freedom House) entitled "The Judiciary: A stronghold of Authoritarianism", and a Human Rights Watch World Report 2007: Iran, dated 11 January 2007. There was also produced very late in the day, on 1 May 2009, an expert report from Dr Mohammad M H Kakhki. Subsequent to the hearing we sent a

memorandum to the parties dated 24 July 2009 pointing out that in view of recent political events in Iran we wanted further evidence and/or submissions on (i) the likely impact on the appellant's case of recent events in Iran and (ii) the issue of whether an Iranian returnee will currently face a real risk of serious harm merely by virtue of being someone who left the country illegally or being someone who faces court proceedings and/or judicial punishment.

5. At the hearing itself Miss Johnstone had submitted that the Tribunal should confine itself to the evidence that was before IJ Hague, as the appellant had not lodged any Rule 32(2) notice under the Asylum and Immigration Tribunal (Procedure) Rules 2005 and in any event the expert report had not been served in accordance with Tribunal directions. Mr Cole for the appellant submitted that we should admit all of the evidence that had been produced. He apologised for the late production of the expert report, which was due to delay on the part of the expert.

6. Following those submissions we told the parties that we would delay our final decision on admission of post-hearing evidence until we were determining the case, but would want submissions from the parties on the further evidence. We briefly adjourned to give Miss Johnstone time to consider the expert report.

7. We have decided to admit all the post-hearing evidence. It is clear from the Statement of Reasons for disposal by consent by the Court of Appeal that the parties agreed that specific regard should be had to the medical evidence. It is also clear from the decision of SIJ Lane finding a material error of law that the Tribunal was concerned that a decision on risk on return be made in the light of the latest evidence about country conditions, and indeed it would be contrary to Ravichandran principles not to decide an asylum appeal in the light of evidence on conditions in a country currrently: see Saber (AP) (Appellant v the Secretary of State for the Home Department) [2007] UKHL 57, para 13). Miss Johnstone is right that the appellant's representatives never lodged a formal Rule 32(2) notice, but it is clear from the file that they intended to produce further evidence and that they gave advance notice they were seeking first medical, and, more recently, expert evidence. In all the circumstances we considered we should exercise our discretion to admit the further evidence; indeed, as already noted, we also took the step post-hearing of seeking further evidence from the parties on two issues specifically to ensure we could address the significance of recent events in Iran arising out of the June 12, 2009 presidential elections.

8. As regards the expert's original report, we note that it was not submitted within the time limits specified by the Tribunal in written directions. That was reprehensible, but we were satisfied that its relevance to the case justified our admitting it into evidence. Miss Johnstone had plainly had an opportunity to consider it prior to the hearing (she spoke of checking details concerning the expert on the internet), but in any event we afforded her additional time to consider it before making her submissions. There is now, as a result of our memorandum, a further report from the same expert.

9. So far as concerns evidence relating to conditions in Iran then, we shall have regard to all the evidence now before us, including evidence post-dating the hearing before IJ

Hague. The position so far as concerns evidence relating to the appellant's particular circumstances is less straightforward. As already noted, we are obliged by the terms of the consent order to consider the further medical evidence, although that is now two years old. However, we also have further evidence from the appellant, including the summary given by IJ Foudy of his evidence before her and a further witness statement from him dated 13 December 2007. In the light of the clear agreement endorsed by the Court of Appeal that the assessment we make of risk in relation to Iran for this appellant is to be made "in the light of the positive credibility findings of the first Immigration Judge", we consider it would be inappropriate to have regard to this further evidence. We are reinforced in that view by the fact that before SIJ Lane the Presenting Officer representing the respondent on that occasion conceded that the findings of fact made by IJ Hague on the appellant's history were sufficiently clear to enable risk assessment to be made by reference to them; the appellant's representatives did not demur. Had we decided to hear oral evidence from the appellant that would also have carried the risk that we then fell into the same error as IJ Foudy, in making findings at variance with those made by IJ Hague, when we have been expressly directed that such findings are to stand. We remind ourselves that we have to conduct a reconsideration not a rehearing of this appeal: see DK (Serbia) [2006] EWCA Civ 1747.

10. In the event we did not need to make a ruling on whether to hear from the appellant, since Mr Cole stated that he would not be calling him.

The two expert reports by Dr Kakhki

11. Dr Kakhki is a special adviser to the Centre for Criminal Law and Justice at Durham University where he also lectures on Comparative Law focusing on Islamic and Iranian justice systems. He is also an Associate of the Centre for Iranian Studies at the same university. Under the aegis of this institution he has provided analysis for the Advisory Panel on Country Information (APCI) of recent COIS reports on Iran. Since 2003 he has been providing expert opinions on Iranian law and procedure to various courts and tribunals. In his report dated 1 May 2009 Dr Kakhki states that the fact that the appellant had made a statement alleging impropriety by the Iranian judiciary in finalising his 13 year court case and returning the bail property would render him liable to face charges of contempt of court. The contents of his remarks would be seen directly or indirectly as insulting towards the Iranian judiciary or government. The next judge who dealt with him could rely on a number of provisions of the Penal Code to punish him for his insults. Its provisions included: Article 609 (which stipulates that anyone who insults any of the leaders of the three branches of the government, or presidential deputies, or ministers, or any of the members of the parliament, or any of the staff of the ministries, or any other state employees, while they are on duty, will be punished by imprisonment from three to six months or flogging of 74 lashes or a fine of 50,000 to 1,000,000 Rials); Article 698 (which concerns the intentional creation of "anxiety and unease in the public's mind", "false rumours", or writing about "acts which are not true", even if it is a quotation; the punishment under this article is either imprisonment for between two months to two years, or up to 74 lashes); Article 513 (which makes it an offence to "insult" religion; this can be punished by either the death penalty, or imprisonment for between one and five

years); Article 500 (which stipulates that, anyone who promulgates any propaganda against the regime, to the benefit of dissident groups or organisations, will be sentenced to three months to one year's imprisonment); and Article 514 (which declares that: "anyone who, in any manner, insults the Founder of Islamic Republic of Iran, Imam Khomeini, or the current supreme Leader of the country will be sentenced to between six months and two years imprisonment.").

12. Dr Kakhki considers that one or more of these offences would be likely to impact on the appellant in the following way:

> "Therefore, as there is no separation between the State, including the judiciary, and religion, expression against the key parts of the government/judiciary may also be seen as a threat to the foundation of the regime. The fact that the statement was made in front of a Judge and his neighbour, [in a court] usually involving other officials or the public, the statement may be characterised as an attempt to spread 'false rumours' in society pursuant to Article 698. This is [because] one interpretation of the appellant's statement is that the court system was not acting in individuals' best interests but rather in that of the government. In addition, denying the authority of the government may be interpreted as a claim against national security and insult to religion per Articles 500 and 513 as rejecting the authority of the court as the extension of the state [and so] can be seen as an attempt to undermine the regime. It is also important to consider the location and context of these statements, namely the court, with Article 609 applying to insult of judicial officials while they are on duty; this is the equivalent of 'contempt of court'".

13. In Dr Kakhki's opinion, the above crimes will be tried at the Revolutionary Court, which is known for its procedural improprieties and mistreatment. This Court was notorious for its disregard of international standards of fairness. As to the accusations he faces concerning arson, these would be tried in the Military Court "as there is no difference between a conscript and a permanent member in terms of jurisdiction, especially as military property was involved in this case."

14. Dr Kakhki also deals with the past and current functions of Sepah Pasdaran (the Iranian Revolutionary Guards Corps). Having outlined its recent history, he notes that among its various roles, Sepah collaborates with the regular military and this may sometimes involve the secondment of military personnel to Sepah, as suggested in the appellant's account. Their functions may include guarding Sepah's installations, as also highlighted in the appellant's account.

15. With regard to Sepah's relationship with the judiciary, he notes that it mainly works alongside the Courts and that it can collaborate, formally or informally, with the Military Courts as they belong to the same security sector within the country. Sepah enjoys very close ties to the government and religious authorities, the Judiciary is very much subject to the influence of these two groups. This was exemplified by a recent case in which members of Basij, a militia group affiliated with Sepah, had committed murder yet received extensive protection from the judiciary.

16. Dr Kakhki also touches on the significance to the case of the appellant's lack of a Military Completion Card:

> "The Card, as the name implies, is granted to those who [have] finished their military service. One role of the Card is to be evidence that all outstanding commitments have been resolved before leaving the military. If there was an unsettled matter following [the appellant's] clashes with the Sepah, including the warehouse he was guarding having [been] burnt down and [there being] outstanding proceedings existing against him, then he would not be entitled to receive it. The function of the Card is crucial throughout society including applying for governmental jobs, passport, marriage, any transactions requiring Notary Office verification etc. All in all, it is very difficult to lead a reasonable lifestyle in Iran without this card."

17. Dr Kakhki then refers to the ample evidence from reputable human rights organisations that torture is standard practice when dealing with prisoners, and many detainees are subjected to its various forms in the first phase of their interrogations. "The specific nature of the torture that a person receives depends on who he is and what the charges against him are." He observes that prison conditions in Iran are inadequate both at the investigatory stages as well as when serving the eventual sentence.

18. Dr Kakhki concludes:

> "Given the above information regarding the systematic use of torture by the Iranian authorities including against critics of the government as well as the inaction by the judiciary even with regard to confessions recognised as having been procured through abuse, it is possible that [the appellant] would face ill-treatment if returned to Iran, particularly due to the aggravating factor of having left the country illegally and his past record of activities."

19. He states that he also doubts that there would be medical treatment available for the appellant's PTSD as noted in the medical report.

20. So far as concerns the appellant's position in relation to his exit from Iran, it was likely that he would not have been able to obtain a passport in the normal way because among the documents males must produce was their certificate of completion of military service or exemption certificate. Also, they must not have been forbidden from leaving Iran by either the Judiciary or any other relevant government authority (for military personnel, a special procedure is required in order to allow them to leave the country).

21. As regards the likely consequences of illegal exit, Dr Kakhki had this to say:

> "… according to Article 34 [of the Penal Code], any Iranian who leaves the country illegally, without a valid passport or similar travel documents, will be sentenced to between one and three years imprisonment, or will receive a fine between 100,000 and 500,000 Rials. The assigned punishment in this article is called a "Taaziri" punishment (a deterrent), the severity of which is at the discretion of the presiding Judge. The Iranian Judiciary believe that the "Taaziri" punishment serves firstly to prevent the guilty party from re-offending, and secondly to benefit society by deterring potential criminals from committing that particular crime.

> In order to proceed [sic] the cases relating to illegal departure, a special court is located in the Tehran Airport. Its branch number is given as 1610. If an Iranian arrives in the country, without a passport or any valid travel documents, the official will arrest them and take them to this court. The court assesses the background of the individual, the date of their departure from the country, the reason for their illegal departure, their connection with any organisations or groups, whether they applied for asylum in other countries and if so their reasons, and any other particular circumstances. Dependent on the outcome of the court's investigation, the judge will decide the severity of the punishment within the parameters of Article 34. This procedure also applies to people who are deported back to Iran, not in the possession of a passport containing an exit visa; in this case the Iranian Embassy will issue them with a document confirming their nationality."

22. In light of the above Dr Kakhki believed that if the appellant had exited illegally this would lead to his prosecution upon return.

23. In a supplementary report dated 2 September 2009, Dr Kakhki describes and analyses recent events in Iran in the wake of the presidential elections of 12 June 2009 in which the incumbent President Ahmadinejad faced a reformist candidate, Mr Hussein Mousavi. The reaction by the supporters of Mousavi to the announcement that President Ahmadinejad had been re-elected with a 62% margin was dramatic. There were major demonstrations of a size not seen since the Iranian Revolution of 1979. The demonstrators alleged vote rigging and election fraud. The government reaction was repressive. There was a heavy involvement of parastatal (mainly Basij) forces and a crackdown on protestors in Teheran and elsewhere. A number of people were killed in clashes with the police and Basij militia. There were: mass arrests including of ringleaders; restrictions on foreign and domestic journalists; disruptions of mobile networks; and blocking of some internet sites. The government has sought to blame the protests on "foreign interference" in Iran's affairs by the UK and other Western countries. His report notes that on 28 June nine local staff members of the British embassy in Teheran were arrested for "inflaming post-election tensions in Iran". Mousavi, along with another candidate, Karroubi, and former President Mohammad Khatami, have continued to reject the election results. The powerful Revolutionary Guard (Sepah Pasdaran) had already made clear prior to the elections that it would not tolerate the formation of a post-election political force under Mousavi's "green movement" and their position had been strengthened by the recent disorders, as the government has had to lean on them more for support in retaining public order and power. Sepah has recently cracked down on dissent within its own ranks. The recent reorganisation of the judiciary reflects a move towards greater militarisation and more extensive security service influence. The government is pursuing a strategy of "mass trials" of those involved in the protests, with frequent "forced confessions". There are credible reports that those arrested and detained in the protests have been tortured.

24. In Dr Kakhki's opinion the result of recent events is that those connected to Britain are now viewed with a default level of suspicion. The implications of such suspicions may, he states, be even greater where the individual in question has a prior record of dissent or relevant criminality. The issue of foreign association and that of the level of risk in the

post-election environment are closely intertwined; the legal consequences have not been limited to those employed by British embassy/organisations, but have also extended to Iranians with UK ties through residency and education. He cites the examples of Mousavi activist Mohammadezra and her husband, two Oxford University students, who had been arrested and detained at Teheran airport when trying to leave the country (report in The Guardian, 19 June 2009). He cites a timesonline article (undated) referring to filming by Iranian embassy staff of the demonstrations in London around the time of the June polls. He cites Nazenin Ansari, the diplomatic editor of Kayhan, a Persian weekly newspaper in London saying she has been investigating claims that a number of British Iranians have "disappeared" since the elections. The same report also refers to someone called Marayam, 32, a student from East London, a maths student who had been detained when in Teheran for four days in a police cell during a holiday to visit her family, before being released without charge. He writes:

> "The situation of those returning from the UK may be particularly perilous as their point of origin would be clear and, where the individual had left the country illegally, the authorities would have the opportunity to investigate fully, checking the individual's name against those wanted by the authorities."

25. Dealing with the appellant's circumstances, Dr Kakhki is firmly of the view that these recent events will have heightened the level and degree of risk he would face on return. Dr Kakhki says he considered that if the appellant were an individual with a record of both recent and historical criminal activity/critical expression, he would at least undergo extensive interrogation to determine the purpose and nature of his stay in the UK. He also considered that one impact of the post-election turmoil was a shift in the priorities of the court system, from more routine case loads (including older claims still not resolved) to "the deluge of new criminal matters arising from the recent events". This would impact not just on the Revolutionary Court, prosecuting national security offences, but also Public Criminal Courts (dealing with public order offences such as rioting) and the Military Court (where military persons, property etc. are involved). In effect this could delay the appellant's ability to have his outstanding arson case heard by months or even years, even assuming there would be no external impediment in the hearing.

The Danish Immigration Service report April 2009

26. Materials produced by the appellant's representatives in response to the Tribunal's memorandum included excerpts of a report dated 30 April 2009 by the Danish Immigration Service, "Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc". This report was based on fact-finding carried out between 24 August-2 September 2008 by a delegation who consulted a number of Iranian officials and other individuals and bodies. Those consulted on the question of exit from and entry to Iran were: H. Mirfakhar, Director General, Consular Affairs, Ministry of Foreign Affairs; Said Hamid Sajdrabi, the person in charge of passport control at Imam Khomeneni International Airport, Immigration Police; several western embassies; an international organisation in Iran and an international organisation in Turkey in relation to obtaining information on the procedures, rules and regulations on exiting and entering Iran. The two government officials confirmed that if a

person has a case pending before a court, they cannot leave Iran and their names would be on a list at the airport so as to stop them being able to leave the country. If a person on the list has already left Iran, the person may face problems on return. Mirfakhar stated to them that "[t]he seriousness of the problems depends on the crime that caused the person to appear on the list". On illegal exit the report went on to say:

> **"7.4 Illegal exit**
> The sources were consulted on the matter of return to Iran of Iranians who have left the country illegally. Mirfakhar informed that a person who has left Iran illegally and who is not registered on the list of people, who cannot leave Iran, will not face problems with the authorities upon return, though the person may be fined. It was added, that a person who has committed a crime and has left Iran illegally will only be prosecuted for the crime previously committed and not for leaving the country illegally. However, a western embassy… stated that a fine is given for leaving the country illegally. The fine for illegal exit can run up to 50 million Iranian Rial which amounts to approximately 5,000 USD. To the knowledge of the embassy, people who have left Iran illegally are not detained upon return. The embassy did not know what happens if a person is unable to pay the fine. The Attorney at Law confirmed that there is a fine for leaving Iran illegally. However, he believed the fine to be around 200-300 US dollars. It was added that if a person has outstanding issues with the authorities (other than leaving illegally) he or she may very likely be punished for these upon return. The punishment will be according to law. However, it may also come to a stricter punishment since the person has left Iran illegally. It was further explained that if a person continues to leave Iran illegally the penalty might rise accordingly. Hence, continuous illegal departures from Iran will result in harsher criminal punishment. A western embassy … informed that an Iranian citizen can return even if he or she has left the country illegally. The embassy explained that the punishment a person might face upon return depends on the acts committed before leaving Iran. A fine may be given for illegal exit. The embassy did not know the size of the fine. Mahdavi stated that only a small number of Iranians leave the country illegally. The fine for leaving Iran illegally is a few hundred dollars and there is no other punishment. This statement is in contrast to the information given by a western embassy … and the Attorney at Law. Both sources knew of high numbers of Iranians who have left Iran illegally. According to Sajdrabi, a person who has left Iran illegally will be subjected to the laws and regulations that cover these issues. When asked to specify this, Sajdrabi repeated that Iranian laws and regulations will be applied in accordance."

<u>Other incidents of problems encountered on return to Iran by persons since the June 2009 election demonstrations</u>

27. Given Dr Kakhki's mention in his latest report of examples of problems facing persons on return in recent months, it is helpful next to set out documents contained in the appellant's further bundle submitted in September 2009. A report dated 8 July 2009 by www.iranhumanrights.org refers to a report they had received from Defenders for Human Rights Centre (DHRC) in Iran concerning Bijan Khajehpour, a business and economic consultant of international renown who was said to have been arrested at Teheran airport following his return from abroad; he was not known, it was stated, to have been involved in any political activities. An Amnesty International news report dated 22 July 2009 refers to the same case, mentioning that during his trips abroad he spoke to

trade officials in Vienna and met the Iran British Business Chamber in London. The same AI report mentions that a French national, Clotilde Reiss, was detained at Teheran airport in Iran, on her way home to France on 1 July: "The 24 year old is accused of espionage in connection with photographs she took during a demonstration in the city of Esfahan in which she participated last month…".

Other background reports

28. In response to the Tribunal's memorandum of 24 July 2009 the respondent submitted a copy of the August 2009 COIS report, pointing out that the report helped with events up to 6 August 2009 and that para 27.14 "gives a fairly comprehensive account of the procedures an undocumented Iranian is likely to face when returning to Iran". Para 27.14, we note, quotes from the Advisory Panel on Country Information (APCI) review of the COI Service's COI Report of August 2008 undertaken by Dr Reza Molavi and Dr Kakhki of the Centre of Iranian Studies at Durham University as follows:

> "According to Article 34, any Iranian who leaves the country illegally, without a valid passport or similar travel documents, will be sentenced to between one and three years imprisonment, or will receive a fine between 100,000 and 500,000 Rials. In order to proceed [sic] the cases relating to illegal departure, a special court is located in Mehrabad Airport in Tehran. Its branch number is given as 1610. If an Iranian arrives in the country, without a passport or any valid travel documents, the official will arrest them and take them to this court. The court assesses the background of the individual, the date of their departure from the country, the reason for their illegal departure, their connection with any organisations or groups and any other circumstances. The judge will decide the severity of the punishment within the parameters of Article 34. This procedure also applies to people who are deported back to Iran, not in the possession of a passport containing an exit visa; in this case the Iranian Embassy will issue them with a document confirming their nationality.…illegal departure is often prosecuted in conjunction with other, unrelated offences. Such a methodology appears to suggest that it is the investigation into the facts surrounding the easily observable and provable offence of illegal departure, namely the motive for such an act (as a decision to depart illegally suggests a desire to escape prosecutorial/police detection for past illegal deeds), that eventually results in the discovery of the underlying offence, leading to a combined prosecution." **[6a] (p76)**

29. At para 9.01 this report cites he same two academics' summary portrayal of the Iranian security forces:

> "Iran maintains an extensive network of internal security and intelligence services. The main parts of the domestic security apparatus are made up of the Ministry of Intelligence and Security, the Basij Resistance Force, the intelligence unit of the [Iranian Revolutionary Guards Corps] IRGC, and the law enforcement forces within the Ministry of Interior that largely are responsible for providing police and border control. The leadership of each of these organizations appears to be fragmented and dispersed among several, often competing, political factions. Public information on all Iranian security and intelligence forces is extremely limited and subject to political manipulation.

> Key to most paramilitary and intelligence forces in Iran is the IRGC, as it holds control over several other organizations or parts thereof. All security organizations without exception report to the Supreme National Security Council (SNSC), as the highest body in the political chain of command."

30. The same COIS report also quotes from major country reports on Iran assessing the situation in Iran up to early 2009, including this from the US State Department, 25 February 2009:

> "The government's poor human rights record worsened, and it continued to commit numerous serious abuses. The government severely limited citizens' right to change their government peacefully through free and fair elections. The government executed numerous persons for criminal convictions as juveniles and after unfair trials. Security forces were implicated in custodial deaths and committed other acts of politically motivated violence, including torture. The government administered severe officially sanctioned punishments, including death by stoning, amputation, and flogging. Vigilante groups with ties to the government committed acts of violence. Prison conditions remained poor. Security forces arbitrarily arrested and detained individuals, often holding them incommunicado. Authorities held political prisoners and intensified a crackdown against women's rights reformers, ethnic minority rights activists, student activists, and religious minorities. There was a lack of judicial independence and fair public trials. The government severely restricted civil liberties, including freedoms of speech, expression, assembly, association, movement, and privacy, and it placed severe restrictions on freedom of religion. Official corruption and a lack of government transparency persisted. Violence and legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; trafficking in persons; and incitement to anti-Semitism remained problems. The government severely restricted workers' rights, including freedom of association and the right to organize and bargain collectively, and arrested numerous union organizers. Child labour remained a serious problem. On December 18, for the sixth consecutive year, the UN General Assembly (UNGA) adopted a resolution on Iran expressing 'deep concern at ongoing systematic violations of human rights'." **[4a] (Introduction)**

31. The COIS report also mentions the Amnesty International report on Iran for 2009, released on 28 May 2009 in which it is noted, inter alia, that "[t]orture and other ill-treatment of detainees were common and committed with impunity".

32. Para 11.03 of the August 2009 COIS quotes from a recent USSD Report description of the Iranian court system:

> "There are several court systems. The two most active are traditional courts, which adjudicate civil and criminal offences, and Islamic revolutionary courts. The latter try offences viewed as potentially threatening to the Islamic Republic, including threats to internal or external security, narcotics and economic crimes, and official corruption. A special clerical court examines alleged transgressions within the clerical establishment, and a military court investigates crimes connected with military or security duties. A press court hears complaints against publishers, editors, and writers. The Supreme Court has review authority over some cases, including appeals of death sentences." **[4a] (Section 1e)** …

> The military courts deal with cases concerning military personnel, including members of the revolutionary guard, Basij and the like, who have broken the law."

33. Mention should also be made of a 2001 Amnesty International report entitled "Iran: A legal system that fails to protect freedom of expression and association", discussing laws used in Iran to silence dissent. Although now an old report, it is still seen by Dr Kakhki and leading reports as reflecting the current position. It states:

> "At least nine laws, many of which are vague and overlap, deal with criticism, insult and defamation notably of state officials; and at least one deals with the dissemination of "false information". The punishments for such charges include imprisonment and the cruel, inhuman and degrading punishment of flogging ….
>
> The Penal Code addresses the issues of criticism and insult in the vaguely worded Articles 514, 608 and 609. Article 514 singles out "insults" made against the late Ayatollah Ruhollah Khomeini, the first Leader of the Islamic Republic of Iran, Article 608 provides for flogging and a fine as punishment for "insulting others, such as using foul language or indecent words…" Article 609 states that criticism of a wide range of state officials in connection with carrying out their work can be punished by a fine, 74 lashes or between three and six months' imprisonment for insult. Once again, the Penal Code provides no guidance regarding what determines "criticism" or "insult".
>
> Article 697 of the Penal Code considers defamation. It states that if an individual makes allegations of an act that "can be considered an offence according to law", but cannot prove that it is true, that person will be sentenced to between one month and one year's imprisonment or 74 lashes or a sentence combining the two. However, if the statements are proven, but the judge concludes that it is a "propagation of obscenities", the person will also be sentenced.
>
> Article 698 concerns the dissemination of false information or rumours with the intention of causing anxiety or unease in the public's mind. This is punishable by flogging or imprisonment. In October 2001, Fatemeh Govar'i [f], a journalist and member of the Dr 'Ali Shariati Cultural Studies Centre (*Daftar-e Pajohesh-ha-ye Farhangi-ye Doktor 'Ali Shari'ati),* was sentenced to six months' imprisonment and 50 lashes by a General court in Qazvin, in central Iran, for charges including "spreading falsehood" in connection with an interview she gave to the weekly journal, *Velayat-e-Qazvin*…"

34. The same Amnesty International report observes that:

> "Under Article 513, offences considered to amount to an "insult" to religion can be punished by death or prison terms of between one and five years. Similarly, Articles 6 and 26 of the Press Code proscribe "writings containing apostasy and matters against Islamic standards [and] "the true religion of Islam…", but state that such cases will be heard in a criminal court. Article 6 of the Press Code specifically states that those convicted will be "assigned punishments according to Article 698 of the Penal Code." This article concerns the intentional creation of "anxiety and unease in public's mind", "false rumours" or writing about "acts which are not true", even if it is a quotation, and provides for between two months and two years' imprisonment or up to 74 lashes.

> Neither the Penal Code nor Press Code specifically defines what activities constitute insult to religion, and both have been used to punish people for the expression of their opinion…."

35. In an article by Majid Mohammadi entitled, "The Judiciary: A Stronghold of Authoritarianism" Issue 15, November 2007 – Aban 1386 – Justice and the Judicial System, the author describes the judiciary in Iran as subject to control and manipulation by the clerics:

> " By appointing loyal members of their inner circles to Judiciary positions and purging it of independent judges, the administration ensured a monopoly on the judiciary by the true believers of the ruling ideology. This monopoly gave clerics the power to implement Islamic decrees within the judicial system in a bid to wield totalitarian control over the people."

36. The author adds:

> "In Iran, the Judiciary is structurally aloof from social developments, acting as the government's tool to settle social conflicts and political challenges while remaining untouched by public opinion. Since all Judiciary officials, including judges, prosecutors and even lawyers are appointed (per article 187 of the Third Development Plan Law), they are only accountable to the person who appoints them, and are not accountable to other individuals or bodies. In political trials which play a role in shaping public opinion, Judiciary officials have refrained from offering any explanations to the people. They have only alluded to the Leaders' speeches, stating that the arrested individuals had been aiding the enemy."

37. The recent media reports submitted by the appellant's representatives in September 2009 (in terms very similar to Dr Kakhki's depiction of events since the June 12 elections) highlight the fact that the regime has arrested hundreds of opposition and reformist activists as well as journalists and human rights defenders (a spokesman for the Judiciary said on August 11 that security forces had detained around 4,000 people in the post-election period) and had engaged in an organised campaign to discredit and criminalise those undertaking peaceful protest. The protesters have been portrayed as having been "controlled by foreigners" through Voice of America and BBC broadcasts and to have been manipulated by a Western-sponsored conspiracy designed to overthrow the government with a "velvet revolution" similar to that tried in Czechoslovakia in 1968. Britain is branded by Iran's leaders as the "Little Satan". In recent months the focus has been convening en masse "show trials" of the protestors before the Revolutionary Court , which often feature confessions by the accused to the effect that they had been duped by "foreign-led plots" against the Islamic Republic orchestrated by the UK and America. According to Amnesty International press reports, over 100 Iranians have faced or will face grossly unfair trials arising out of these events. According to iranhumanrights.org the abuse of detainees has been widespread, affecting as many as 2,500 persons who have been detained as conspirators. The new head of the judiciary, Ayatollah Sadeq Larijani (appointed in early August 2009), is described as a hardliner intent on doing the regime's bidding.

<u>Submissions</u>

38. The submissions at the hearing were as follows. Miss Johnstone relied on the respondent's reasons for refusal. As regard the incidents that occurred during the appellant's national service, she urged that we follow IJ Hague's finding that they were "now so old that they have no bearing upon his asylum claim" (para 10). When considering the expert report by Dr Kakhki, she urged us to take into account the negative views about him expressed by the then President of the Immigration and Asylum Tribunal, Mr Justice Ouselely, in MS (Fresh Evidence) Iran [2004] UKIAT 00130. In any event, she added, the expert report clearly acknowledged that persons charged under Iranian law for anti-Islamic conduct had possible defences and in the appellant's case he would be able to point to the fact that his outburst in court was the result of frustration over a delay lasting 13 years in being given a decision by the military court. It was clear from the amount of money he had used to leave Iran that he could arrange for good legal representation in Iran. The only examples given by the expert of persons convicted for anti-Islamic offences were either mid-level government officials or academics. By contrast the appellant held no government or academic position and had no media profile. The appellant had previously only come before a military court and, despite the expert's view to the contrary, there was no good reason why that same court would not continue to deal with the appellant, considering him for example as having been in contempt of court. The expert's report had lacunae, in particular he did not deal with what the implications for the appellant of the visit to his home by officials and he did not consider the medical evidence, and the (potentially discrepant) evidence arising from Miss Lees having been told by the appellant that he had had surgery to his hand at the time when the injury to it was sustained. The expert's views on the consequences to a returnee of having exited illegally were at odds with Tribunal country guidance. The expert appears not to have understood that the appellant would only be returned with some form of travel documentation.

39. Miss Johnstone pointed out that in his SEF and asylum interviews the appellant had made no mention of injury to his hand or of torture or ill-treatment. IJ Hague made no mention of the appellant saying he had a hand injury. Dr Scott's opinion covered matters he himself accepted were outside his expertise. Neither he nor Miss Lees followed medical report protocol of making findings which graded injuries as "consistent with" or "highly consistent with" the claimed causes, nor did they address the fact that the appellant had been a welder. She accepted from Dr Scott's report that the appellant suffered from PTSD at the time of the report but his diagnosis was that the appellant's psychological state was affected by his anxieties about the possible outcome of his asylum case and it was odd that there was no up-to-date medical evidence.

40. On return, submitted Miss Johnstone, the appellant would certainly face questioning, but it was unlikely he would face detention as the court had allowed him to remain at liberty after his court outburst and, according to his asylum interview, they had only told him to report to Sepah. In any event, even if detained there was no reason to think it would result in ill-treatment. He would not automatically be found guilty. There was no reason to think someone like him, a person with no political profile, would be ill-treated.

41. Mr Cole submitted that on the strength of IJ Hague's findings, the appellant had already experienced persecution, including beatings, being held for eight months without charge in solitary confinement, subjected to excessive court delay and bail with adverse consequences for his access to social services; and facing a charge (anti-Islamic conduct) that was contrary to ECHR norms. Further, on return he would be regarded as a bail-jumper and someone who had exited illegally. It was unrealistic to suppose he would not face further detention and ill-treatment during the court procedures. It was likely he would be convicted on a charge of anti-Islamic conduct and face lashings as a result. To consider that all his problems would be solved by getting a good lawyer in Iran was fanciful. On IJ Hague's findings the appellant was disposed to deal with authorities in Iran in a "counter productive" manner. As to the medical evidence, its importance lay not in its observations on his hand injury and/or its causation, but on the fact that he was severely traumatised, although he accepted Dr Scott's report was now 18 months old.

42. The case law contained in the bundles should, he said, be treated with caution in view of its vintage but in any event it made clear that whilst a person facing return to Iran could not succeed in a claim to face a real risk of persecution or ill-treatment solely on account of having exited illegally or of facing court proceedings likely to entail detention, they did confirm that such factors, in conjunction with the additional risk factors, could establish such a real risk. In this regard it was noteworthy that on the basis of the background evidence the appellant's offence of "anti-Islamic" conduct was one which in the Iranian context would be viewed in political terms.

43. It is for the appellant to prove that he is entitled to refugee protection, humanitarian protection and Article 3 ECHR protection to the standard of reasonable degree of likelihood or real risk. We must consider his case in the context of the evidence as a whole.

Our Assessment: general issues

Insulting the judiciary

44. Previous Tribunal country guidance cases have assessed with various aspects of the Iranian legal system and court system: see e.g. RM & BB (Homosexuals) Iran CG [2005]. Building on previous Tribunal assessments it is only necessary here for us to update certain matters. The major country reports and the expert evidence of Dr Kakhki now before us concur in viewing the Iranian judiciary as lacking in independence and subject to a number of political pressures. Events since June 2009, with the appointment of a new hardliner as head of the judiciary, appear to have increased the susceptibility of the judiciary to political influence by the security forces and current leadership. So far as concerns the likely response of the judiciary to someone who has insulted a judge in an Iranian court, in the absence of more evidence giving specific incidents of persons recently punished for insults in this context, it is difficult to make any precise findings, but we would accept that judges in the various courts would have regard to numerous provisions in their Penal Code that could be brought to bear against an individual who had conducted himself in court in a way likely to be considered insulting to the presiding

judge or to the judiciary or justice system generally. In our view a person who had conducted himself in an Iranian court in a manner likely to be seen as insulting either to the judiciary or the government or to Islam would face an increased level of risk on return. In our view, engagement in such conduct is to be regarded as a significant risk factor.

Anti-Islamic conduct

45. It is plain from the background evidence before us that being accused of anti-Islamic conduct amounts to a significant risk factor in respect of likely treatment a person will face on return. Both Dr Kakhki's evidence and that from established sources such as Amnesty International, Human Rights Watch and the US State Department reports concur on this.

Ongoing court proceedings

46. One of the questions the Tribunal posed to the parties in its memorandum was whether an Iranian returnee would currently face a real risk of serious harm merely by virtue of being someone who faces court proceedings and/or judicial punishment. (We refer here to court proceedings other than ordinary civil proceedings). It is apparent from the evidence collected by the Danish Immigration Service in August/September 2008 that it is likely that the Iranian authorities hold lists of those subject to ongoing court proceedings and utilise them for various purposes, including the monitoring of departures from and arrivals into the country. In the event of a person involved in ongoing court proceedings who has left Iran but then faces return, it is clear that such a history is likely to be picked up through records held at the airport and that in consequence the person concerned will face a closer interrogation than otherwise. However, both by Dr Kakhki and the sources consulted by the authors of the Danish fact-finding report of April 2009 consider that the degree of risk varies according to the nature of the court proceedings. This persuades us that being involved in ongoing court proceedings is not in itself something that will automatically result in ill-treatment; it constitutes a risk factor but one which has to be considered in the light of all the surrounding 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.

Illegal exit

47. The other question the Tribunal posed to the parties in its memorandum was whether an Iranian returnee would currently face a real risk of serious harm merely by virtue of being someone who left the country illegally or being someone who faces court proceedings and/or judicial punishment in Iran in the light of the June 2009 election events. This is a question which the Tribunal has faced in a number of past country guidance cases on Iran, in particular AD (Risk-Illegal Departure) Iran CG [2003] UKAIT 00107 and the answer in every case has been that the authorities will not perceive illegal exit as such to be a reason for ill-treating a returnee. Although the parties sought to assist us with further evidence relating to this issue, they have not made submissions as to the extent to which that evidence has altered the position, so we must decide the matter as best we can in the light of all the evidence.

48. We would observe that there is some tension in the recent background evidence as to the precise position as regards the consequences of an illegal exit. In particular, there is a clear difference of view as to whether the discovery by the authorities at the point of return that a person exited illegally will cause any significant difficulties. On the one hand, there are sources (as cited in the most recent Danish Immigration Service report) which consider that illegal exit is regarded as a matter that in itself might cause a person to face a relatively modest fine but nothing more untoward than that. That position is also that which has been taken in Tribunal country guidance cases for some time. On the other hand, Dr Kakhki in certain passages of his APCI review (co-written by Dr Reza Molavi) and in his evidence to us considers that discovery of illegal exit results in the person being arrested and taken to a special court located in Teheran airport. Dr Kakhki says that this procedure is likely to be used not just for persons who arrive without a passport or any valid travel documents but "people who are deported back to Iran, not in the possession of a passport containing an exit visa; in this case the Iranian Embassy will issue them with a document confirming their nationality".

49. So far as concerns the position prior to June 2009, we do not consider that the evidence taken as a whole indicates that the mere fact of a past illegal exit is viewed by the authorities in Iran as a reason to do anything other than impose a relatively modest fine on the individual concerned. If it had been otherwise, we consider that this would have been noted by the non-governmental sources consulted by the Danish Immigration Service and would also have become known, through local informants, to one or more of the international human rights organisations who closely monitor events in Iran. We do not know what is(are) the source(s) on which Dr Kakhki (and his colleague) relies (rely) for his account and we note that he himself does not seek to address its apparent conflict in at least some respects with the descriptions given in other sources. That is in contrast to many other observations set out in his report which are squarely based on established sources.

50. In any event, we note that even on Dr Kakhki's account, whether or not an individual taken before this court suffers adverse consequences depends on the outcome of the court's investigation. It is apparent from the questions Dr Kakhki describes as being asked by those who run this court that they consider that the mere fact of illegal exit is not enough to result in adverse treatment. Those questions indicate that they are looking for persons who have a particular profile, criminal and/or political.

51. It is strongly suggested in Dr Kakhki's most recent report that events in 2009 have altered the likely position for returnees. As already noted, he considers that those connected to Britain are now likely to be viewed with greater suspicion. He also cites, with apparent approval, the diplomatic editor of Kayhan, whose view is that the situation of those returning from the UK "may be particularly perilous". Whilst we have no difficulty accepting that as a result of recent events the Iranian government has sought to blame the UK (and US) governments for inciting the anti-regime protests, we are unable to accept that this has led to any significant change in the treatment of returnees. If there had been such a change we consider that there would have been a significant number of incidents

reported by one or more of the websites monitoring human rights in Iran showing that persons were experiencing difficulties merely on the basis that they were a returnee, or a returnee from the UK. Yet of the only two examples Dr Kakhki provides, one concerns a Mousavi activist and her husband and both examples appear to concern persons who are British citizens or persons in the UK with valid leave facing difficulties whilst paying a visit to Iran, not Iranians returning. We ourselves have extracted from the further bundle of evidence sent by the appellant's solicitors a mention of two other cases involving persons detained at Teheran airport on return, one concerning a business and economic consultant with an international reputation, the other concerning a French national accused of espionage. In the former case, the details given indicate that the gentleman was someone with high-profile business connections, so it does not help us much in considering the likely situation for ordinary returnees and the second was someone who had taken photographs at a demonstration. We appreciate that we are considering very recent events and that the Iranian authorities may take action against individuals hidden from the public eye. Equally, however, we take into account that persons returning to Iran will normally have family or friends who will have been forewarned of their date and time of return and would be in a position to notify human rights bodies if such persons disappeared or emerged having met with ill treatment. We consider that the above examples are far too slender a basis for drawing any safe inferences concerning likely risk on return for returnees as such. Given that the government has demonised Britain, we would have expected that if returnees from the UK generally were meeting with difficulties there would have been significant documentation in background sources. If the diplomatic editor of Kayhan in June/July was investigating claims that a number of British Iranians have "disappeared" since the elections in June, it seems to us significant that several months later nothing further has come to light to indicate that those investigations produced anything of note. The evidence afforded by the above examples is far more consistent with an inference that it is only persons who are considered to have some political profile connected with recent events who now face a greater risk on return. For these reasons we do not think it would be justifiable to describe "being a returnee from the UK" or some such category even as a risk factor. (We would also observe, although we do not include it in our assessment of risk, that the same analysts who highlight the recent Iranian government's attempt to blame the 2009 protests on a UK-led conspiracy, also emphasise that those in power know this is merely rhetoric designed to divert people's attention away from the level of opposition and to justify punitive action against those involved in the protests.).

52. What we derive from our above analysis is that the most likely position is as follows. Illegal exit is not a factor which in itself is a significant risk factor, although if it is the case that a person would face difficulties with the authorities for other reasons, it could be a factor adding to risk. Normally illegal exit is considered as an offence attracting only a fine involving a relatively modest sum of money; however, matters can become more problematic when the person is (or is discovered to be) someone involved in ongoing court proceedings or someone who has a previous criminal record or someone who is viewed in a political light as having views contrary to that of the current regime. Given the updating we have now done of the evidence on this issue, the case of AD (Risk-Illegal Departure) Iran CG [2003] UKAIT is to be treated as historical guidance only.

Risk factors generally

53. We do not seek in this determination to conduct a comprehensive review of existing Tribunal country guidance on Iran. However, we are satisfied from the ground we have had to traverse in order to deal with the appellant's case, that it is possible to say the following, by way of summary on issues of risk on return:

(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 illegally Iran 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 from Dr Kakhki 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.

(vi) This case replaces AD (Risk-Illegal Departure) Iran CG [2003] UKAIT 00107.

Our Assessment: the appellant's case

54. Subject to our earlier comments, we must decide this case in the light of all the evidence before us. The onus of proof is on the appellant to show that he faces a real risk of persecution or serious harm or ill-treatment. We must bear in mind that were we to find the appellant suffered past persecution or serious harm, Article 4(4) of the Qualification Directive (paragraph 339K of the Immigration Rules) states that the appellant's persecution is to be treated as a "serious indication" of continuing risk "unless there are good reasons to consider that such persecution will not be repeated ".

55. As already noted, this is a reconsideration hearing in which the respondent earlier conceded that sufficiently clear findings of fact had been made by IJ Hague in respect of the appellant's past experiences, and we are obliged by the terms of the consent order to decide it in the light of IJ Hague's positive credibility findings. We use the phrase "sufficiently clear" because, whilst IJ Hague's findings do not set out in detail what he accepted, his determination at para 8 records that he saw fit to proceed "on the basis that events have occurred broadly in the way he [the appellant] describes". It would go directly against the consent order were we to seek to circumscribe that proposition except insofar as was done by IJ Hague. It is true that IJ Hague's acceptance of the appellant's account was immediately qualified by the words "although I am cautious of his tendency to overstate and self justify"; and that earlier in the same paragraph he had made clear that he regarded as embellished the appellant's claim that when the authorities came to arrest him they had carried away his younger brother as a hostage and had attended in excessive numbers. However, there are no other respects in which he qualifies the appellant's account.

56. One other finding which we considered primary so far as IJ Hague was concerned related to the appellant's personality and disposition. Alongside his tendency to embellish, overstate and self-justify, the IJ found that "a lack of diplomacy may have aggravated his problems" (para 8) and that "the appearance is that he has approached matters in a headstrong and counter productive way, with consequences to his own detriment" (para 9). At para 11 he stated that "the likelihood is that he has been clumsy and counterproductive in his efforts to resolve those difficulties [a reference to problems over his discharge from National Service and over his bail]".

57. Having explained what we take to be the positive findings on credibility which we must accept, it is important to clarify their outer limits. In our view they do not and cannot extend to IJ Hague's evaluation of the implications of the appellant's past experiences for risk on return. They do not extend, therefore, to IJ Hague's opinion that the incidents that occurred during the appellant's national service "are now so old they have no bearing upon his asylum claim". That is an opinion that goes to risk assessment and if accepted would run counter to the requirement stipulated at para 339K of the Immigration Rules that past persecution or serious harm (assuming for the moment his past experiences did amount to such) may be a serious indication of future risk. In the same league are the IJ's comments at para 9 that "it would have been sensible [for the appellant] to seek advice on whether the neighbour could withdraw his surety", at para 10

that the plain clothed men who came to his house were "[p]ossibly … the equivalent of tipstaffs" and his observation at para 11 that:

> "I find it difficult to accept that he has provoked such hostility that he faces significant ill-treatment. An apology to the court should have suggested itself as a remedy. I find it difficult to accept that his departure from the country was occasioned by fear".

58. These are not primary findings of fact as to the appellant's past experiences, but value-judgment seeking to convey the IJ's assessment of risk. As such we must disregard them. We have to do so because his assessment was found by Senior Immigration Judge Lane to be vitiated by legal error, in having been made without taking proper account of background country evidence then before him.

59. We take into account the medical report. We think it unwarranted to attach any particular weight to apparent discrepancies between the appellant's account to Miss Lees and that he gave otherwise about injuries to his hand, as her summary of his account was sketchy, but we agree with Miss Johnstone that insofar as the evidence of both medical experts is advanced to support the appellant's case that in the past he suffered torture and a hand injury in particular, it is of very limited value as Dr Scott had no expertise in such injuries and neither took account of his past occupation. At the same time, we note that Miss Johnstone did not dispute its core finding that in late 2007 the appellant suffered from severe PTSD.

60. As regard the expert reports by Dr Kakhki, we have regard to the comments made by the IAT President in MS although it remains, of course, that in general terms each report by an expert stands to be considered on its merits, unless, of course, past criticism is in very strong terms. We note that Dr Kakhki was one of the country experts chosen to assist on the former APCI (Advisory Panel on Country Information), in its review of August COIS reports on Iran. For the reasons given earlier, we did not find that either of his reports provided much substantiated evidence specific to the issue of risk on return for returnees from Iran generally and we did not find that his latest report demonstrated a properly empirical approach to the evidence he drew on to suggest recent events had resulted in a significant change in relation to risk on return for returnees as such (including failed asylum seekers). In stating that he considered that as a result of recent events those associated with the UK would be more likely to face risk on return, he appears to be too ready to rely on sources without seeking to check whether they are corroborated/substantiated and to be too ready to jumble together quite different items of evidence (those concerning returnees as such and those concerning returnees with some type of profile) and to draw over-generalised inferences from them. None of these criticisms means, however, that we did not derive considerable benefit from his reports insofar as they conveyed his own expertise regarding the Iranian justice system and helpfully drew together what is known about current aspects of Iranian society and its justice system from other background sources.

61. The first issue we must decide is whether the appellant's past experiences amount to persecution or ill-treatment. We have no doubt that they do. According to IJ Hague's summary, when he was court-martialled he was detained for four months during which

time he was "subjected to beatings and interrogation". Irrespective of whether what he suffered could be said to amount to torture, it was clearly a form of inhuman and degrading treatment. Following his becoming a suspect for arson on a military installation he was then held for eight months without charge (for some of which time his answers at interview state that he was in solitary confinement). The court proceedings against him have been subject to delay lasting for some 13 years, a period which on any reckoning has been excessive, and has had adverse consequences for his civil status, since he has not been able to obtain a military completion certificate. Even if we had not found his experience of physical beatings in detention to amount to ill-treatment, these other factors taken together with the beatings, certainly cross the threshold of a minimum level of severity.

62. Having found that the appellant has experienced past persecution, we turn to examine whether there are good reasons to consider such conduct would not be repeated. In our judgment there is a real risk of further ill-treatment. In this context three features of his particular circumstances are of particular importance. First, there is his previous history of difficulties with the authorities just recounted. He will be known to them as someone who has been the subject of a court martial, two periods of military detention and as someone who has spent a considerable period on bail awaiting possible trial and has not as yet been given a military completion certificate. By leaving Iran he has plainly broken the conditions of his bail. It is also reasonably clear that he has left Iran illegally without ever having been granted passport facilities due to his non-completion of National Service.

63. The second feature of importance relates to the implications for him of the events of 2005. On the basis of IJ Hague's finding he had told the military court judge that although he (the military judge) professed to do justice it was only a lie. In consequence of this outburst officials had come to his home when he was out, telling his mother that he must surrender to them as he was guilty of anti-Islamic conduct. Whether or not what they said meant they would have arrested him there and then (had he been in), or simply that they required him to report to the military court, we are satisfied that such conduct would lead to him facing further interrogation and detention. In addition to having jumped his existing bail he had then failed to surrender to the authorities who we know had branded him "guilty of anti-Islamic conduct". To our mind it is reasonably likely that his failure to surrender himself would give the authorities an additional reason to punish him. Given that his longstanding problems over the lodgement by neighbours of deeds for their house as bail involved both Sepah and the military court, we think that Sepah would have (at some point) some direct involvement in ensuring he faced punishment for his anti-Islamic conduct. We do not think it necessarily matters whether he would face punishment in a Military Court only or also instead in a Revolutionary Court. Nor do we think it necessarily matters whether he will face actual prosecution for anti-Islamic behaviour. All that matters, so far as risk on return is concerned, is that the authorities will view him as someone they must punish. That punishment may take the form of prosecution and/or conviction and/or lashings or a fixed period of detention. But on any of these possible scenarios there would be an indefinite period of detention whilst they investigated his case further. Whatever view they took about whether to detain him in the past, his failure to

report to the authorities and his action in fleeing Iran, are likely to cause them to take an adverse view of him on his return and subject him to ill treatment.

64. Why we see his likely further detention for an uncertain period as the key to this case brings us to the third feature of his personal circumstances which we consider particularly pertinent to the question of risk on return. It relates to the appellant's personality and disposition. As is accepted by Miss Johnstone the appellant has in the recent past suffered from severe PTSD. Lacking as we do any medical evidence since the reports made by Dr Scott and Miss Lees in late 2007, we do not know whether he has continued to suffer from that condition. What we do know, however, is that having seen and heard the appellant and considered his past experiences in depth IJ Hague found him to be someone who lacks diplomacy and who in relation to his dealings with the Iranian authorities "has approached matters in a headstrong and counter productive way, with consequences to his own detriment". Bearing in mind that we have vivid illustrations of this in the form of his earlier periods of detention and, in 2006, in the form of his own outburst before the military court, we consider that the appellant is very likely to behave in much the same way on return. Whereas possibly an Iranian returnee of normal disposition may be able, on his own or with legal help to negotiate his way out of his current difficulties, including his bail jumping and failure to surrender to the authorities, we are strongly persuaded that this appellant will not take the same approach and that as before, in IJ Hague's words, it will have "consequences to his own detriment."

65. Given the above findings it is not strictly necessary for us to examine whether his having exited Iran illegally would add to his level of difficulties. Earlier, we examined the general issue of whether an Iranian returnee will face a real risk of serious harm merely by virtue of being someone who has left the country illegally. Our conclusion was that it 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. We consider that the fact (which the Iranian authorities will quickly be able to establish) that the appellant left Iran illegally is likely to add at least to some extent to the level of risk he already faces for other reasons, particularly given that he left by jumping bail. As already noted, we also consider that in encounters with the authorities, because of his truculent disposition towards authority, he is very likely to aggravate his own difficulties in their eyes.

66. In reaching the above conclusions we attach particular significance to the background country evidence relating to present-day Iran. Although we approach the expert reports by Dr Kakhki with caution, we consider that his report is useful in highlighting what is conveyed by the US State Department Reports on Iran, Freedom House, Human Rights Watch, Amnesty International and UN General Assembly reports, as well as reputable media sources such as the Washington Post. In relation to the appellant's past experiences IJ Hague has already, very properly, noted that "[his] account is broadly consistent with the description of the courts, Sepah and the bail system set out in the COIS report". The latter is, of course, a compendium of a whole range of established sources and materials. In relation to the further evidence we have before us we consider that Iran remains a country in which a person considered by those in authority to be guilty of anti-

Islamic conduct will face a real risk of ill-treatment. So far from ameliorating the appellant's difficulties, the appellant's inevitable need to engage further with the Iranian justice system, dominated by an increasingly authoritarian judiciary subject to influences from the security services, is only likely to add to the degree of risk he would otherwise face.

67. Accordingly we conclude that the appellant faces a real risk on return of persecution, serious harm and ill-treatment.

68. It remains to consider whether such persecution would be for a Refugee Convention reason. We do not consider that the appellant's past persecution arising from his detention when undergoing military service manifested such a reason. However, we find that the risk he faces on return will be on account of religion and political opinion. The fact that persons in authority have branded him guilty of anti-Islamic conduct is sufficient to demonstrate that.

69. For the above reasons we conclude:

> The IJ materially erred in law.
>
> The decision we substitute for his is to allow the appellant's appeal on asylum and Article 3 grounds.

Signed

Senior Immigration Judge Storey

APPENDIX A

DECISION BY SENIOR IMMIGRATION JUDGE P R LANE (signed 7 September 2007)

REASONS FOR THE DECISION THAT THERE IS AN ERROR OF LAW IN THE DETERMINATION by

APPELLANT: SB

DATE OF RECONSIDERATION HEARING: 5 September 2007

1. At the reconsideration hearing on 5 September 2007 the Tribunal found that there was a material error of law in the determination of the Immigration Judge.

2. As conceded by Mr Wood, the Immigration Judge, having found that the appellant's account of his experiences in Iran was reasonably likely to be true, failed to make proper findings as to risk on return to that country; in particular, whether the Iranian authorities would be reasonably likely to proceed against him for anti-Islamic conduct, in connection with the appellant's outburst in court in 2006.

3. The Tribunal was unable on 5 September to proceed to substitute a fresh decision to allow or dismiss the appeal. Although, on the basis of Mr Wood's concession that the Immigration Judge made sufficiently clear findings about the appellant in Iran, and that those findings should stand, the Tribunal would have expected on that day to have been presented with evidence and detailed submissions as to the outstanding issues on risk on return, Mr Ahmed was in the difficulty that both he and his instructing solicitors had only very recently been instructed by the appellant (who had previously represented himself) and certain case law upon which Mr Wood intended to rely had not been successfully received by fax in London. The Tribunal accordingly adjourned the reconsideration to be completed in Manchester.

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