



EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

Lord Reed  
Lord Carloway  
Lord Hardie

[2009] CSIH 51  
XA56/08

OPINION OF THE COURT

delivered by LORD CARLOWAY

in the application for leave to appeal

by

MB (A.P.)

Applicant:

against

THE SECRETARY OF STATE FOR  
THE HOME DEPARTMENT

Respondents:

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***Act: Forrest; Drummond Miller LLP***

**Alt: Lindsay; C Mullin, Solicitor to the Office of the Advocate General for  
Scotland**

9 June 2009

**1. Factual Background**

[1] The applicant is forty five years of age. He is married with three children. He originates from Hamadan in Western Iran. He comes from a reasonably prosperous family. He owns three houses in Iran. Latterly, he was employed as a bus driver in

Tehran. On 30 April 2006 he had been told that he, and other co-employees, were to be made redundant. He went on strike and took part in demonstrations about the redundancies outside the parliament buildings. The demonstrations went on for several weeks, until the applicant was arrested on 10 May. He was detained, along with many other demonstrators, and maltreated in prison until 11 June, when he was released. He claimed that his release occurred when his brother produced the deeds to his (the brother's) house as security for bail.

[2] On 13 June the applicant left Iran, arriving in the United Kingdom through France on 6 July, when he immediately claimed asylum. His claim was rejected by the respondent on 23 August. An appeal against that decision failed before a single Immigration Judge on 18 October. However, a reconsideration was ordered on 4 June 2007. That resulted in the applicant's claim being rejected again on 14 November 2007.

[3] At the reconsideration hearing before two judges of the Asylum and Immigration Tribunal, the applicant gave evidence that he had been instrumental in starting the demonstrations. However, this was the first time he said this. In his screening interview, for example, he had said that he did not know who had organised the demonstration. The AIT noted that the demonstrations had been going on since 2005, mainly at the instance of Mansour Osanloo, who had been arrested twice but released as a result of international and other pressure. In January 2006, many drivers had been arrested by the Iranian authorities in advance of a planned demonstration, but all but the ring leaders had been released after a short period.

[4] The applicant produced photocopies of certain summonses which purported to require him to attend court in relation to "causing public disorder, taking part in unlawful protests of the National Bus Company". They warn the applicant that failure

to attend will result in the issue of a warrant for his arrest. The applicant had said that he had not known about the summonses prior to his departure from Iran but that they had been left with a neighbour, who had been caretaking one of the applicant's properties in Tehran. Although the Immigration Judge hearing the case a year earlier had regarded the genuineness of these summonses with scepticism, there was no explanation for the originals not being produced. The applicant claimed that his brother had also been summonsed and would forfeit his property in the event of the applicant's non-appearance at court.

[5] The applicant made reference to an incident, when he had been in detention, involving his son being abducted, possibly by the security forces, but managing to escape. The applicant's wife had not told him about this until their arrival in the United Kingdom. The AIT did not believe that this would happen and rejected the account, for what it may have been worth.

[6] The applicant's core contention was that, if he were returned to Iran, he would be persecuted because of his imputed political opinion, stemming from the workers' protests. But the AIT held that he had exaggerated his role in the demonstrations. They pointed to the conflict between his account of his involvement at the hearing and at the screening interview. The AIT held that he was one of many bus drivers who had been detained and quickly released. The AIT also looked upon the absence of original documents, where the authenticity of these documents had been raised at the earlier hearing. Furthermore, one of the summonses bore a date before the departure of the applicant from Iran. The AIT rejected the evidence about the summonses. The AIT also disbelieved the applicant's evidence about the involvement of his brother, given that the applicant claimed to own properties himself. The AIT did not consider that

the applicant's profile was such that he would be of interest to the authorities on a return to Iran.

## 2. Submissions

[7] In his grounds of appeal and helpful written Note of Argument, the applicant maintained that the AIT erred in law in two respects. First they had failed properly to take into account evidence relating to the treatment of the demonstrators, notably that the authorities were persecuting persons involved in labour activities generally, and bus employees in particular. It was not disputed that such persecution could be said to be because of imputed political opinion (*Re Inzunza v Minister of Employment and Immigration* [1979] 103 DLR 105). The AIT had not had regard to the possibility of the applicant being persecuted notwithstanding its finding that he had only a low profile in the demonstrations. Instead of considering that matter, the AIT had stopped as soon as they rejected the applicant's account of his involvement as a prime mover. It was not the prominence of the person which was important, but the issue of whether he was likely to be persecuted again, given that it had been proved that he had been persecuted in the first place for his political activities. In relation to the latter aspect, the AIT had not made proper findings about what had happened to the applicant in prison. Reference was made to *Demirkaya v Secretary of State for the Home Department* [1999] Imm AR 498, although it was accepted that there the appellant was an activist who had been repeatedly persecuted. Secondly, the AIT had erred in law in holding that the distinction between an organizer and an ordinary worker was relevant. The risk to the ordinary worker could, on the applicant's evidence, be significant because of his lack of public profile. There was no evidence that ordinary participants were not persecuted in the same way as the ring leaders.

[8] The respondents had lodged written submissions, responding to the applicant's Note of Argument. In essence, these argued that the AIT had taken all relevant and material considerations into account in assessing whether the applicant would be at

risk on a return to Iran. They had held that he would not, given his low profile involvement in the strike. The distinction between a person with such a profile and an organiser was a relevant and material consideration to take account of when assessing the level of risk to the applicant. The AIT had correctly understood the background evidence which was to the effect that the interest of the authorities was dependent upon the level of involvement.

### **3. Decision**

[9] Iranian law prohibits public sector strikes. The authorities determined to repress the actions of the bus drivers in demonstrating against the redundancies. It was not disputed that persecution of the drivers in these circumstances could amount to a Convention reason, notably imputed political opinion. In any event it would potentially amount to a breach of a demonstrator's human rights. The AIT accepted that the treatment of the demonstrators by the Iranian authorities had been severe. They did not doubt that the applicant would have been mistreated in prison. There was no reason to suppose that, in the future, demonstrators would not be dealt with in a similarly severe fashion by the Iranian authorities. However, this case did not proceed upon the basis that the applicant would return to Iran and resume his former strike and protest activities. Rather, the applicant's case was that, upon his return to Iran, and without a ny further involvement in the bus drivers' dispute, he would be persecuted for his imputed political opinion relative to the workers' rights and that his human rights would be infringed accordingly.

[10] The AIT addressed themselves to the question posed, namely whether the applicant, whom they found to fall into the category of a simple demonstrator and not a ring leader, would remain of such interest to the authorities on his return to Iran that he would continue to be persecuted (e.g. be re-arrested, detained and ill treated). The

AIT answered this question in the negative by concluding, on the basis of the background information and contrary to the contention in the appeal, that ordinary demonstrators were not normally subject to continuing interest but were released, like the applicant, shortly after initial detention. The AIT held that any continuing interest was limited to the ringleaders.

[11] Having answered the question as a generality, the AIT then correctly focused on the next issue of whether, nevertheless, this applicant had demonstrated that, in his particular case, the authorities did retain an interest in him, hence the summonses produced. The AIT dealt with this matter as one of credibility; holding that they did not accept the summonses as genuine and hence rejecting the evidence of continuing interest by the authorities. The reasons for the rejection of this evidence are adequate, intelligible and not challenged by the applicant. Once the genuineness of the summonses was rejected, there was no basis upon which the AIT could hold, even on the low standard of proof applicable, that the applicant would be of any interest to the authorities upon his return to Iran.

[12] In these circumstances, no error of law is apparent from the determination of the AIT upon the reconsideration and this application for leave to appeal must be refused.