

Heard at Field House
Iran CG [2002] UKIAT 01328
On 18 April 2002

FK (Persecution-Refugee-Political Writer)

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

02.05.2002

Before:

Mr Justice Collins (President)
Mrs S Hussain JP
Mr A A Lloyd JP

Between:

FARSHAD KIANI DEH KIANI

APPELLANT

and

The Secretary of State for the Home Department

RESPONDENT

DETERMINATION AND REASONS

1. The Appellant is a citizen of Iran. He left Iran in July 2000. He left illegally in the sense that he did not tell the authorities there that he was leaving, nor did he obtain a visa to come to the United Kingdom. He used either false documents or no documents and certainly, when he arrived in this country, he arrived as an illegal entrant. He claimed asylum. That claim was refused by the Secretary of State and his appeal to an Adjudicator, Mr J Hallam, was rejected on 12 November 2001. He now appeals, by leave, to the Tribunal.
2. The Appellant himself had worked as a writer in Iran. He points out in his statement that there is no freedom of the press and that anything

written in public which is opposed to the government or to the state ideology is likely to lead the author into trouble. He says that, as a result, he was afraid to express his real opinions. In February 2000, he wrote an article for a newspaper which was critical of the company for which he was working and its management. That company was a state-owned petroleum company and, as a result, he said that his article was critical of the state. Not only did he write the article, but he was also involved in a hunger strike at the company. He produced leaflets which criticised the management of the company. Indeed, the editor of the newspaper had, it seems, been killed. He said that as a result of this he was subject of surveillance at his home address and he was observed by people in an unmarked car and other people were making enquiries of his neighbours. However, nothing positive had happened to him other than that the company had refused to pay him in full following his activities in April 2000. He felt the pressure was increasing on him and that, at any moment, he would be likely to be reported to the revolutionary guards and arrested for his anti-state activities and views. As a result, he decided in July to leave Iran. As we say, he did so in a clandestine fashion.

3. The Adjudicator accepted his account of what had happened to him. There was no question about his credibility, but the Appellant went on to say that he had not in fact suffered any ill-treatment from the authorities in Iran. He had not established whether or not the hunger strike and his articles and leaflets had made any difference to the way that his fellow employees were treated, although he had said, in evidence, that the management had indicated that they would respond to the hunger strike so that the employees could and would return to work. But, the Adjudicator went on to say that he was not to be treated as an editor of the paper and therefore he would not be at risk. In paragraph 19, he says this:

“Taking all matters into account I cannot find that the Appellant can establish that he has a well-founded fear of persecution. I cannot find that the Appellant can claim the Convention ground of social group because he could well not write any more articles along the lines of the articles that he had been writing and in addition he could as suggested to him apologise for the articles that he had already written”.

4. There are, as it seems to us, two aspects to the question as to whether he has established a real risk of persecution were he to be returned. There is first the question whether he would be ill-treated so as to amount to persecution if he continues to work as a journalist, or as a writer in any way, in Iran. He would have to take special care to ensure that he said nothing which could be construed in any way as being against the state. The reason for that is that he has been identified already and has been the subject of suspicion. Accordingly, he would be foolish to continue to write publicly at all, unless he wrote nothing which could, as we say, be construed in any way as anti-state. He would have, of course, to consider that the construction to be placed

upon what he wrote would be that placed by someone who wanted to find an anti-state view in whatever he did write.

5. Secondly, there is the problem as to what might happen to him on return. The mere fact that someone has left Iran to claim asylum is not of itself regarded as a political act by the authorities and is not punishable as such. That is the conclusion to be found in paragraph 7.24 of the October 2001 CIPU Report. He will face the possibility of prosecution for having left unlawfully, but that in itself is not something that can be regarded as persecution. The sentences can range from one month to three years imprisonment and/or a fine. Those penalties are not in any way disproportionate to the offence which has been committed. But, again, he is someone who would have been under suspicion. He left the country unlawfully. He is then returned two years later. It seems to us, as a matter of common sense, that he would then be regarded with heightened suspicion and there would then be a real risk that he would be detained and if detained, would be treated in such a way as amounted to persecution. There is ample evidence which suggests that those who are regarded as being against the state and are picked up by the authorities are indeed liable to ill-treatment. But, even without ill-treatment, detention itself is capable in certain circumstances of amounting to persecution if it is detention for a reason which falls within the Convention. Here that reason would clearly be political opinion.
6. What largely triggered the grant of leave to appeal to the Tribunal were the conclusions of the Adjudicator at paragraph 20 where he says this:

“So far as political opinion is concerned it is clear that the Appellant was not a member of any particular political party and he does not claim that he was reported in any way by any other political group and this being the case I find that he cannot make out he has a well-founded fear of persecution on the grounds of his political opinion.”

It is not necessary to be a member of a political party, or indeed to be a supporter of any political group, to show that persecution is on the basis of political opinion. Any member of the public may have views about the government of a particular country without being any way actively involved in politics or political parties, and if those views are expressed, and if those views are contrary to the state, and if the state is a form of dictatorship which ill-treats and persecutes those whom it regards as being opposed to it, then there is a classic case of persecution for the reason of political opinion.

7. Mr Deller has, correctly, not sought to argue that the Adjudicator's views in paragraph 20 can be upheld. The thrust of his argument has been that the Adjudicator was entitled to find, and indeed was correct to find on the evidence that there was no real risk of persecution, but he accepts that if the Tribunal is persuaded that that is wrong, then it clearly was for a Convention reason. Bearing in mind the low standard of proof that is appropriate in these cases, we are indeed persuaded

that there is a real risk of persecution were this Appellant to be removed to Iran. It is true that he has not been ill-treated in such a way as to amount to persecution in the past, but that cannot be determinative. It is not necessary for someone who has a genuine fear of persecution to wait until it happens before deciding to leave the country. This Appellant has anticipated the persecution that he feared by leaving before anything particularly untoward happened to him, but that does not mean that he does not face a real risk of persecution were he to return.

8. For the reasons we have given, as we say, we are persuaded that he has discharged that low standard of proof and accordingly we allow this appeal and declare that this Appellant is to be treated as a refugee.

Mr Justice Collins
President